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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 8. OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

**NOTICE OF PUBLIC MEETING/PUBLIC
HEARING/BUSINESS MEETING OF THE
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD AND NOTICE OF
PROPOSED CHANGES TO TITLE 8 OF THE
CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **July 16, 2009**, at 10:00 a.m. in the Carmel Room of the Junipero Serra State Building, 320 West 4th Street, Los Angeles, California 90013.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **July 16, 2009**, following the Public Meeting, in the Carmel Room of the Junipero Serra State Building, 320 West 4th Street, Los Angeles, California 90013.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **July 16, 2009**, following the Public Hearing, in the Carmel Room of the Junipero Serra State Building, 320 West 4th Street, Los Angeles, California 90013.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Low-Voltage Electrical Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **July 16, 2009**.

1. **TITLE 8: LOW-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Article 11
Section 2395.6
Portable and Vehicle-Mounted Generators

2. **TITLE 8. GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 154

Sections 6070, 6074, 6075, 6080,
6085, 6087 6089, 6090, 6100, 6115,
and 6120, and Appendices A and B

Pressurized Worksite Operations

Descriptions of the proposed changes are as follows:

1. **TITLE 8: LOW-VOLTAGE ELECTRICAL SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 5,
Article 11

Section 2395.6

**Portable and Vehicle-Mounted
Generators**

INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking was initiated as the result of stakeholder input to the effect that the recently adopted verbiage of Section 2395.6 was unduly restrictive. Section 2395.6(a) existing prior to the May 5, 2008, amendments, contained a grounding exception for portable or vehicle-mounted generators rated not more than 5 KW. The earlier standard provided that “under the following conditions, the frame of a portable or a vehicle-mounted generator need not be grounded and shall be permitted to serve as the grounding electrode for a system supplied by the generator:

- (1) The noncurrent-carrying metal parts of equipment located on the vehicle and the equipment grounding conductor terminals of the receptacles are bonded to the generator or vehicle frame, and
- (2) The generator supplies only equipment located on the vehicle or the generator and/or cord- and plug-connected equipment through receptacles mounted on the vehicle or on the generator, and
- (3) The frame of a vehicle-mounted generator is bonded to the vehicle frame, or [underline added for emphasis]
- (4) The generator is single-phase, portable or vehicle-mounted, rated not more than 5 KW, and the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces.”

The May 5, 2008, modification reworded and reformatted Section 2395.6 consistent with federal standards, 29 CFR 1910.304(g)(3)(i) and (ii) as Subsections (a) and (b). However, because the federal wording did not refer to 5 KW portable and vehicle-mounted generators, an existing state provision was retained as an

additional condition for systems supplied by portable and/or vehicle mounted generators. However, this inclusion, appended with an “and” rather than an “or” had an unintended consequence of defining portable and vehicle-mounted generators as being not more than 5 KW, thus creating a very restrictive requirement, beyond the provisions of the existing state standard and the counterpart federal standard which contains no reference to 5 KW portable or vehicle-mounted generators.

A stakeholder comment brought this matter to the Board’s attention. In the process of reviewing and researching the genesis of this change, Board staff ascertained from the preamble for the federal rulemaking that the federal omission of the 5 KW generator exception was deliberate, as explained on page 7159 of the Federal Register¹. Based on the federal rationale, it has been determined that retention of the provision for 5 KW generators as an exception would be inconsistent with the National Electrical Code and the federal standards. The Board, therefore proposes to delete the 5 KW generator subsections from the standard.

Section 2395.6. Portable and Vehicle-Mounted Generators.

Subsection (a).

This subsection for portable generators provides that the frame of a portable generator need not be grounded and may serve as the grounding electrode for a system supplied by the generator under the following conditions:

- (1) The generator supplies only equipment mounted on the generator or cord- and plug-connected equipment through receptacles mounted on the generator, or both; and
- (2) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame, and [underline added for emphasis]
- (3) The generator is single-phase, portable, rated not more than 5 KW, and the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces.

It is proposed to delete subsection (a)(3). The effect of this change will be to correct a modification which inadvertently made the new standard more limiting than federal standards and more restrictive than the state standard existing prior to May 5, 2008. This deletion will also conform California grounding standards for portable and vehicle-mounted generators to counterpart federal standards.

¹ Federal Register, Vol. 72, No. 30, dated Wednesday, Feb. 14, 2007, Department of Labor (OSHA), 29 CFR Part 1910, Electrical Standard, page 7159.

Subsection (b).

This subsection for vehicle-mounted generators provides that the frame of a vehicle need not be grounded and may serve as the grounding electrode for a system supplied by a generator located on the vehicle under the following conditions:

- (1) The frame of the generator is bonded to the vehicle frame, and
- (2) The generator supplies only equipment located on the vehicle and cord- and plug-connected equipment through receptacles mounted on the vehicle, and
- (3) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame, and
- (4) The system complies with all other provisions of Article 11 of these Low-Voltage Electrical Safety Orders, and [underline added for emphasis]
- (5) The generator is single-phase, vehicle-mounted, rated not more than 5 KW, and the circuit conductors of the generator are insulated from the generator frame and all other grounded surfaces.

It is proposed to delete subsection (b)(5). The effect of this change will be to correct a modification which inadvertently made the new standard more limiting than federal standards and more restrictive than the state standard existing prior to May 5, 2008. This deletion will also conform California grounding standards for portable and vehicle-mounted generators to counterpart federal standards.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal.

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, this proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the

State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7,
Article 154

Sections 6070, 6074, 6075, 6080,
6085, 6087, 6089, 6090, 6100, 6115,
and 6120, and Appendices A and B
Pressurized Worksite Operations

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking was initiated in response to a request from the Mining and Tunneling Unit of the Division of Occupational Safety and Health (Division) to update the decompression tables in Article 154 (OSHA decompression tables) which apply to tunneling operations where work is performed in a compressed air environment. An unacceptably high incidence of decompression sickness has been reported where the OSHA decompression tables were used on compressed air tunneling projects. The industry has discontinued the use of the OSHA decompression tables in favor of more up-to-date decompression tables which employ the use of oxygen breathing gas during decompression. The use of these newer tables has greatly reduced the incidence of decompression sickness.

This proposed rulemaking action contains numerous non-substantive, editorial, reformatting of subsections, and grammatical revisions. These non-substantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

Section 6070. Application.

Section 6070 provides guidance on the application of the standards in Article 154, Pressurized Worksite Operations. The proposal would add the word “environment” to indicate that Article 154 applies to work in a

“compressed air environment.” That term is defined in Section 6074. The effect of this proposed revision is to improve clarity.

Section 6074. Definitions.

Section 6074 provides definitions of terms used in Article 154. The proposal would delete the definition of “Normal Condition” because that term is proposed to be deleted from Section 6085 and would no longer appear in Article 154. Proposed Section 6085 would replace the reference to the decompression table for normal conditions in Appendix A with a reference to the decompression tables in Chapter 9 of the U.S. Navy Diving Manual — Revision 6 which would be incorporated by reference. The effect of this proposed revision is to be consistent with the use of the decompression tables incorporated by reference in proposed Section 6085.

A new definition of “Supervising Physician” is proposed to be added. The text of the definition is substantively the same as the text that is proposed to be deleted from Section 6120(a)(1). That text and the terms “retained physician” and “appointed physician” which are used in Article 154 would be replaced with “supervising physician.” The effect of this proposed revision is to improve clarity and consistency.

Section 6075. General Provisions.

New Section 6075(c) would require that employees who are exposed to or control the exposure of others to hyperbaric conditions shall be trained in hyperbaric related physics and physiology, recognition of pressure related injuries, and how to avoid discomfort during compression. The advisory committee convened to consider amendments to Article 154 recommended that training requirements be added to require employees be provided information on the cause, signs and symptoms of decompression sickness. This training is necessary because some employees may have no prior experience working in compressed air environments and are unfamiliar with the hazards. When employees understand the purpose and importance of detailed decompression procedures, they are more likely to follow the procedures. Employees must also be able to recognize the signs and symptoms of decompression sickness so that appropriate treatment can be provided. Training on how to avoid discomfort during decompression prevents discomfort such as middle ear pain which could lead to injury if pressure in the middle ear is not correctly equalized with the outside pressure. The effect of this proposed revision is to be at least as effective as the training requirements in Section 1926.803(e)(1) of the counterpart federal standard.

Section 6080. Compression Rate.

The proposal would delete the word “Rate” from the section title because subsection (b) of this section pertains to the maximum pressure and not the compression

rate. The effect of this proposed revision is to improve clarity.

Section 6080(b) prohibits subjecting an employee to pressure exceeding 50 pounds per square inch (psi) except in an emergency. The proposal would add an exception to the prohibition which would allow work in pressure exceeding 50 psi when approved by the Division. The effect of this proposed exception is to permit tunneling operations which are performed at depths that require employees to work in pressure greater than 50 psi.

The proposal would also add a note to Section 6080(b) that would refer the reader to the exception to Section 6085 which provides that decompression tables used for pressure exceeding 50 psi may be used if recommended by the supervising physician and approved by the Division for use at the worksite. The effect of this proposed note is to refer the reader to additional requirements related to work at pressure exceeding 50 psi.

The proposal would add an exception which would exempt employers from the requirements of subsections (a) and (b) in an emergency. The effect of this proposed exemption is to allow an employee with decompression illness or an employee who is exposed to an unplanned rapid decompression to be immediately recompressed at a rate or pressure which exceeds that specified in subsections (a) and (b).

Section 6085. Decompression for Normal Conditions.

The proposal would re-title the section "Decompression of Employees". The effect of this proposed revision is to broaden the scope of the section to address a variety of conditions other than "normal conditions", such as repetitive exposure conditions, work at altitude, and ascent to altitude after decompression.

Section 6085 requires that decompression for normal conditions be in accordance with the decompression tables in Appendix A. Section 6085 would be renumbered to Section 6085(a). New Section 6085(a) would be amended to replace the reference to the tables in Appendix A with a reference to the decompression tables in Volume 2, Chapter 9 of the U. S. Navy Diving Manual — Revision 6 which would be incorporated by reference. Section 6085(a) would require that decompression be in accordance with the decompression tables specified in subsections (a)(1) to (a)(6). Proposed Exception No. 1 would allow employees to be decompressed in an emergency according to the supervising physician's recommended decompression procedures. Proposed Exception No. 2 would allow the use of alternative decompression tables when recommended by the supervising physician and approved by the Division. The dive tables in subsections (a)(1) to (a)(6) would specify which of the tables in the referenced

Chapter 9 are to be used based on the conditions surrounding an employee's exposure to a compressed air environment. The proposal would delete Appendix A and, in effect, replace the dive tables in Appendix A with the decompression table referenced in proposed subsection (a)(2).

The effect of this revision is to update the current decompression tables which are outdated and do not provide adequate protection for employees from decompression sickness. The proposed revision is at least as effective as the counterpart federal standard 29 CFR 1926.803. The decompression tables for normal conditions in Appendix A of Article 154 and in Appendix A of 29 CFR 1926.803 are substantively the same. These tables are commonly referred to as the OSHA decompression tables. The federal standards include decompression tables for normal conditions, but not tables for other conditions such as the tables for repetitive exposure conditions in Appendix B of Article 154.

Revision 6 of the U.S. Navy Diving Manual was published on April 15, 2008. The decompression procedures in Chapter 9 of the manual replace the air decompression procedures that have been in use by the Navy for more than fifty years. These new procedures are considered safer and more flexible than the older procedures, primarily because oxygen is used during decompression to accelerate elimination of excess nitrogen from the body. The advisory committee, which was convened to consider updating the decompression tables in Article 154, considered several recently developed decompression tables that use oxygen during decompression. The committee unanimously recommended replacing the current OSHA tables with the new decompression tables in Revision 6 of the U.S. Navy Diving Manual.

The proposal would add a note to proposed Section 6085(a) to inform the reader that Revision 6 of the U.S. Navy Diving Manual is available on the internet. The effect of this proposed note is to inform the reader how the document which is incorporated by reference may be obtained.

New Section 6085(a)(1) would be added to specifically reference the No-Decompression Limits and Repetitive Group Designation Table for No-Decompression Air Dives, Table 9-7. The effect of this proposed revision is to specify the decompression table to be used to determine the no-decompression limits and the repetitive group designators for work in a compressed air environment that does not require decompression.

New Section 6085(a)(2) would be added to specifically reference the Air Decompression Table — Table 9-9. The effect of this proposed revision is to specify the table that shall be used to determine the decompression schedules and repetitive group designators for

work in a compressed air environment that requires decompression.

New Section 6085(a)(3) would be added to specifically reference the Residual Nitrogen Timetable for Repetitive Air Dives — Table 9–8. The effect of this revision is to specify the table that shall be used to determine the Residual Nitrogen Time for an employee who has some residual nitrogen in his/her system when beginning work in a compressed air environment.

New Section 6085(a)(4) would be added to specifically reference the Sea Level Equivalent Depth — Table 9–4. The effect of this proposed revision is to specify the table that shall be used to correct the sea level decompression tables for use at altitudes of 1,000 feet above sea level and higher.

New Section 6085(a)(5) would be added to specifically reference the Repetitive Groups Associated with Initial Ascent to Altitude — Table 9–5. The effect of this proposed revision is to specify the table that shall be used to adjust decompression schedules when an employee who is not fully equilibrated at altitude begins work in a compressed air environment.

New Section 6085(a)(6) would be added to specifically reference the Required Surface Interval Before Ascent to Altitude After Diving — Table 9–6. The effect of this proposed revision is to specify the table that shall be used to determine when it is safe for an employee to fly or ascend to higher altitude after performing work in a compressed air environment.

New Section 6085(b), (b)(1) and (b)(2) would be added to instruct the reader how to apply the referenced U.S. Navy decompression tables to a non-diving operation, such as work in compressed air, and to specify restrictions on the use of the decompression tables. As provided in the exceptions to Section 6085, the restrictions in subsection (b)(2) regarding the use of the referenced air decompression table do not apply in an emergency or when following decompression procedures recommended by the supervising physician and approved by the Division in accordance with the conditions specified in the exceptions. The effect of these proposed revisions is to provide guidance on the use of the reference decompression tables.

New Section 6085(b)(1) would require employers to use the decompression tables specified in Sections 6085(a)(1) to (a)(6) in accordance with the rules, instructions and examples in Chapter 9 of the referenced U.S. Navy Diving Manual that apply to the tables. It would also require employers to use applicable scientific principles when applying the diving related terms, definitions and units of measure used in Chapter 9 to a non-diving operation such as work in compressed air. The proposal would provide a conversion factor for converting FSW to psi. The effect of this proposed revision is to instruct the reader how to apply the referenced

U.S. Navy dive tables to a non-diving operation such as work in compressed air.

New Section 6085(b)(2)(A) would prohibit the use of Table 9–9 for pressures exceeding 50 psi(g) unless recommended by the supervising physician and approved by the Division. The proposal is consistent with amended Section 6080(b) and the recommendations of the advisory committee. The effect of this proposed revision is to provide an additional measure of medical and regulatory review of decompression procedures for pressures above 50 psi which present an increased risk of decompression sickness.

New Section 6085(b)(2)(B) would prohibit the use of Table 9–9 for pressures greater than 190 FSW. The advisory committee recommended that Table 9–9 not be used for pressure exceeding 190 FSW to prevent nitrogen narcosis. The effect of this proposed revision is to prevent nitrogen narcosis.

New Section 6085(b)(2)(C) would require a gas mix of air and oxygen (AIR/O₂) to be used when the table indicates a gas mix of either AIR or AIR/O₂ may be used but recommends using a gas mix of AIR/O₂. The effect of this proposed revision is to provide an additional measure of safety to reduce the risk of decompression sickness.

New Section 6085(b)(2)(D) would prohibit surface decompression (decanting). The effect of this proposed revision is to provide protection for employees that is at least as effective as the federal standard, CFR 1926.803(f)(3) which permits decanting only when necessary and then only after the supervising physician has established procedures for decanting.

New Section 6085(b)(2)(E) would prohibit the use of Table 9–9 for a bottom time and pressure that is designated an Exceptional Exposure in the table. The risk of decompression sickness and/or oxygen toxicity is substantially greater for Exceptional Exposure conditions than for work at lower pressures and shorter bottom times. The effect of this proposed revision is to reduce the risk of decompression sickness and oxygen toxicity.

New Section 6085(b)(2)(F) would require the compression rate to be in accordance with Section 6080(a). Section 6080(a) provides a specific compression rate which is slower than the 75 feet per minute (FPM) descent rate designated in Table 9–9. The slower compression rate provides an opportunity to determine if an employee is experiencing discomfort such as middle ear pain which could lead to injury if compression proceeds at too fast a rate. The effect of this proposed revision is to prevent discomfort or injury from compressing at too fast a rate and to avoid conflict between the decompression rate specified in Section 6080(a) and the descent rate designated in Table 9–9.

New EXCEPTION No. 1 to Section 6085 would exempt employers from the provisions of subsections (a)

and (b)(2) in an emergency provided that employees are decompressed in accordance with decompression tables and procedures recommended by the supervising physician. Exception No. 1 to Section 6085 would permit decanting in an emergency following the recommendations of the supervising physician. In an emergency, it may be necessary to recompress employees to prevent decompression sickness, treat decompression sickness, or treat other injuries. The appropriate decompression procedures for a particular emergency may not comply with the specific requirements of Section 6085. In an emergency it may be necessary to recompress employees to prevent decompression sickness, treat decompression sickness, or treat other injuries. The appropriate decompression procedures for a particular emergency may not comply with the specific requirements of Section 6085.

The effect of the proposed exemption is to allow the supervising physician to recommend appropriate decompression procedures to be followed in an emergency.

New EXCEPTION No. 2 to Section 6085 would exempt employers from having to comply with the decompression tables specified in subsection (a) or with the conditions specified in subsection (b)(2) for use of Air Decompression Table 9-9, provided the employer complies with decompression tables and procedures that have been recommended by the supervising physician in writing and approved by the Division for use at the worksite. When requested by the Division, the employer would be required to provide evidence demonstrating that the alternative tables and procedures are as effective as the U.S. Navy decompression tables referenced in this subsection. Exception No. 2 would permit decanting when conducted in accordance with decompression tables recommended by the physician and approved by the Division. The Division may require evidence that the recommended surface decompression procedures are as effective as those in Revision 6 of the referenced U.S. Navy Diving Manual.

The effect of the proposed exception is to allow needed flexibility because it is anticipated that some compressed air work may exceed the pressures and bottom times covered by the tables specified in subsection (a) and/or the limitations placed on their use by subsection (b)(2). For example, some tunneling operations are performed at depths that require employees to work in pressure exceeding 50 psi which is the maximum allowed by subsection (b)(2)(B).

Section 6087. Decompression After Repetitive Exposures.

Section 6087 requires that the appointed physician establish procedures for decompression for repetitive exposures and refers to the tables and instructions in

Appendix B. The tables in Appendix B were adapted from U.S. Navy Diving Tables which have been superseded by Table 9-8 in Revision 6 of the U.S. Navy Diving Manual. Appendix B allows the Division to accept alternate methods of decompression for repetitive exposures provided the licensed physician submits the proposed procedure to the Division for its review and approval.

The proposal would delete Section 6087, the reference to Appendix B, and Appendix B. The proposal would address decompression for repetitive exposures in amended Section 6085(a)(3). That Section would require decompression be conducted in accordance with the Residual Nitrogen Timetable for Repetitive Air Dives — Table 9-8 which is incorporated by reference. Proposed Exemption No. 2 to Section 6085 would allow the employer to implement alternative decompression procedures that have been recommended by the supervising physician and approved by the Division. The effect of this proposed revision is to protect employees from repetitive exposure to compressed air environments because the out-dated decompression tables for repetitive exposures in Appendix B do not adequately protect employees from decompression sickness.

Section 6089. Decompression by Decanting.

Section 6089 requires that, if decanting is necessary, the appointed physician shall establish procedures for decompression; and that no more than 5 minutes shall elapse between decompression and recompression. The proposal would delete Section 6089 and add exceptions to Section 6085 discussed prior. The effect of the proposed revision is to ensure that decanting is not performed except in an emergency in accordance with the supervising physician's recommendations; or when following decompression procedures recommended by the physician in writing and approved by the Division.

Section 6090. Air Locks.

Section 6090(a) prohibits an employee passing from a compressed air environment to atmospheric pressure without being decompressed in accordance with the procedures in Appendix A, Appendix B or Section 6089. The proposal would replace the decompression procedures in Appendix A, Appendix B, and Section 6089 with the decompression procedures in revised Section 6085. Because all of the decompression procedures have been relocated to Section 6085, the proposal would revise the reference in Section 6090(a) to reference Section 6085. The effect of this proposed revision is to provide an internal reference to the section where the decompression procedures have been relocated.

Section 6100. Temperature, Illumination, Sanitation and Ventilation.

Section 6100(e) provides that ventilation in the locks and chambers, with the exception of the medical cham-

ber, shall be such that the air quality meets the requirement of Section 5144(e). Section 5144 is the Respiratory Protection standard. In 1998, Section 5144 was renumbered to Section 5147 and a new Section 5144 was adopted to be at least as effective as the new federal respiratory protection standard. Section 5147 has since been repealed. Prior to the adoption of the new Section 5144 in 1998, subsection (e) pertained to air quality. When the new standard was adopted in 1998 the provisions regarding air quality were relocated to subsection (i). The internal reference in Section 6100(e) to the air quality requirements in Section 5144 was not revised to reflect the relocation of these requirements from subsection (e) to subsection (i). The proposed amendment would change this reference from Section 5144(e) to Section 5144(i). The effect of this proposed revision is to re-establish the appropriate reference to the air quality requirements for breathing air in the respiratory protection standard.

New Section 6100(i) would require that when an oxygen breathing gas system is used during decompression, the employer shall take one, or both, of the following steps to ensure that the concentration of oxygen inside the chamber or lock does not exceed twenty-five percent (25%) by volume: (1) The oxygen breathing gas system shall capture the oxygen that is not consumed by the user and directly exhaust it to a well ventilated area outside of the lock or chamber; or (2) An oxygen meter shall be used to continuously monitor the oxygen concentration inside the chamber or lock. The purpose of ensuring that the oxygen concentration does not exceed 25% is to prevent creating an atmosphere that increases the fire hazard. The purpose of the revision regarding the oxygen breathing gas system is to require an overboard dump system that exhausts the occupant's expired breathing gases to prevent a build up of oxygen inside the chamber or lock. The purpose of the oxygen monitor is to immediately alert the lock or chamber attendant of an increase in the oxygen concentration above 23.5%. The effect of the proposed amendments is to ensure that the use of oxygen during decompression does not increase the fire hazard.

Section 6115. Fire Protection.

New Section 6115(i) would require that equipment used with oxygen mixtures > 40% would be designed and maintained for oxygen service; be free from oil, grease and combustible materials; have slow-opening shut-off valves; and be protected from physical damage. The effect of revised subsection (i)(1) is to prevent fires or other hazardous reactions that may occur from the use of equipment or materials that are incompatible with oxygen. The effect of revised subsection (i)(2) is to prevent oxygen from igniting combustible materials. The effect of revised subsection (i)(3) is to prevent fires

caused by particle impact ignition resulting from rapidly opening a valve on a compressed oxygen cylinder. The effect of revised subsection (i)(4) is to prevent fires from the accidental release of compressed oxygen.

Section 6120. Medical Control.

Section 6120(a)(1) requires that the employer retain 1 or more physicians licensed in the State of California familiar with and experienced in the physical requirements for the medical aspects of compressed air work. The proposal would keep the requirement for the employer to retain a physician and replace the text which specifies the qualifications of the physician with the term "supervising physician." The proposal would add a new definition in Section 6074(b) for "supervising physician" which would be defined as a physician licensed in the State of California who is familiar with and experienced in the physical requirements for the medical aspects of work in compressed air environments. The effect of this proposed revision is to improve clarity and consistency.

Section 6120(a)(3) which requires that an oxygen tolerance test shall be passed by all persons engaged in compressed air work is proposed for deletion because the advisory committee considered this requirement to be unreliable. Subsections (a)(4) and (a)(5) would be renumbered to subsections (a)(3) and (a)(4) to maintain the sequential number of the subsections. The effect of this proposed revision would be to eliminate the requirement for the oxygen tolerance test which is unreliable.

Section 6120(b)(13) requires that the medical chamber shall be in constant charge of an attendant under the direct control of the retained physician. The proposal would replace the term "retained physician" with the term "supervising physician." The effect of this proposed revision is to improve clarity and consistency.

Appendix A contains Decompression Tables No. 1 and No. 2 and an explanation of the tables. The proposal would delete Appendix A in its entirety and instead rely on the tables and instructions incorporated by reference in Section 6085. The effect of this proposed revision is to replace the decompression tables with the updated U.S. Navy decompression tables in Chapter 9 of the U.S. Navy Diving Manual — Revision 6 which is incorporated by reference.

Appendix B contains Decompression Tables No. 3, No. 4 and No. 5 and an explanation of the tables which are used for repetitive exposure to compressed air environments. The proposal would delete Appendix B in its entirety and instead rely on the tables and instructions incorporated by reference in Section 6085. The effect of this proposed revision is to update the decompression tables in Appendix B with the updated U.S. Navy decompression tables in Chapter 9 of the U.S. Navy Div-

ing Manual — Revision 6 which is incorporated by reference.

DOCUMENTS INCORPORATED BY REFERENCE

- Volume 2, Chapter 9, Air Decompression, U.S. Navy Diving Manual, Revision 6, April 15, 2008.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The cost impact of the proposal on business was considered at the June 30, 2008, advisory committee meeting and the committee agreed that any potential increase in cost would be offset by savings. Mr. Kevan Corson said that there may be costs associated with the safety equipment and procedures required when oxygen is used for decompression; however there would be cost savings from using oxygen because it would reduce decompression time. Reducing the decompression time could eliminate the need for a special decompression chamber which is required when the total decompression time exceeds 75 minutes. Dr. Van Hoesen said that costs associated with the hyperbaric treatment of employees for decompression sickness would be reduced because the revised decompression tables will result in fewer cases. She noted that these savings could be substantial.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standards. Local agencies will be required to comply with the proposal and thereby incur some costs. These costs may be required to be reimbursed by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than July 10, 2009. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on July 16, 2009, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions includ-

ing all the information upon which the proposals are based is open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

**TITLE 10. DEPARTMENT OF
INSURANCE****NOTICE OF PROPOSED ACTION**

DATE: May 29, 2009

REGULATION FILE: REG-2007-00038

SUBJECT OF PROPOSED RULEMAKING

California Insurance Commissioner Steve Poizner ("Commissioner") proposes to adopt the regulations, described below, after considering comments from the public. The Commissioner proposes to add Title 10, Chapter 5, Subchapter 3, Article 3.3, Sections 2309.1 through 2309.20, of the California Code of Regulations.

The proposed regulations are intended to improve the Commissioner's surveillance of the financial condition of insurers by requiring (1) an annual audit by independent certified public accountants of the financial statements that report the financial position and the results of operations of insurers; (2) Communication of Internal Control Related Matters Noted in an Audit; (3) Management's Report of Internal Control Over Financial Reporting.

PUBLIC HEARING — DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to

present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

Date and Time **Wednesday, July 22, 2009**
10:00 a.m.

Location **Department of Insurance**
300 South Spring Street
Los Angeles, CA 90013

1st Floor North Tower
Administrative Hearing Bureau
—Hearing Room

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on July 22, 2009. Please direct all written comments to the following contact person:

Jack K. Horn
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, California 94105

(415) 538-4129
(415) 904-5896 (facsimile)
homj@insurance.ca.gov

Questions regarding procedure, comments, or the substance of the proposed regulations should be addressed to the contact person listed above. In the event that contact person is unavailable, inquiries regarding the proposed action may be directed to the backup contact person:

Tomoko Stock
Investment Officer II
California Department of Insurance
300 S. Spring Street, 14th Floor
Los Angeles, California 90013

(213) 346-6182
stockt@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, addressed to the contact person at the address listed above, **no later than 5:00 p.m. on July 22, 2009.** Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

Written comments transmitted by e-mail will be accepted only if they are sent to the following e-mail address: homj@insurance.ca.gov. The Commissioner will also accept written comments submitted by facsimile only if they are sent to the attention of the contact person at the following **facsimile number: (415) 904-5896**. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. **Comments sent by e-mail or facsimile are subject to the 5:00 p.m., July 22, 2009 deadline.**

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 900.2, 730, *et seq.*; 923 ; 739-739.12 , inclusive; 988; 1065.1, *et seq.*; 900.8; 900.9; 903.5; 924; 925, *et seq.*, with reference also to the National Association of Insurance Commissioner's ("NAIC"). The Commissioner proposes to adopt these regulations pursuant to the authority in section 900.2 of the California Insurance Code; *CalFarm Insurance Company v. Deukmejian* (1989) 48 Cal.3d 805; *20th Century Insurance Company v. Garamendi* (1994) 8 Cal.4th 216.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Insurance Code section 900.2, provides that all insurers doing business in California must have an annual audit by an independent certified public accountant. It further provides that the form and content of the audit report must be in conformity with the Annual Audited Financial Reports instructions contained in the annual statement instructions as adopted from time to time by the National Association of Insurance Commissioners ("NAIC").

Existing law further provides that the Commissioner may promulgate regulations to further the purposes of section 900.2.

There are no existing statutes or regulations that codify the form and content of the Annual Audited Financial Reports instructions.

The proposed regulations would codify the audit reports and related requirements currently contained in the NAIC's Annual Statement Instructions and incorporates the standards recently adopted by the NAIC. The proposed regulations would provide specific guidance on the contents of the Annual Audited Financial Reports and require that insurers register the name and address of their independent certified public accountant with the Commissioner.

The proposed regulations would also provide (1) the list of qualifications for independent certified public accountants to be eligible to conduct the audits; (2) the conditions under which insurers may consolidate or combine audit reports; (3) the scope of the audit report.

The proposed regulations would also provide that insurers and independent certified accountants have a duty to report adverse financial conditions and any unremediated material weaknesses to the Commissioner.

The proposed regulations would also provide definitions of the terms used in the regulations and also provide that Audit Committee members must be "independent" as that term is defined in the regulations.

Finally, the proposed regulations would also provide for exemptions and effective dates.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandates on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency and no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of the Government Code. There are no nondiscretionary costs or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner has determined the proposed regulations may have some cost impact on a representative

private person in that an insurer may have to institute internal procedures to ensure it is in compliance with the corporate governance provisions of these proposed regulations.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the proposed regulations may have on the creation or elimination of jobs within the State of California; to assess the creation of new businesses or the elimination of existing businesses within the State of California; to assess the expansion of businesses currently doing business within the State of California.

There may be a small increase in accounting firms retained or company staff allocated to help set up the necessary process to meet the regulations' requirements. The Commissioner also invites interested parties to comment on these issues.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the State that the proposed regulations apply to businesses.

IMPACT ON SMALL BUSINESS

The Commissioner has determined the proposed action may affect small business.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has been otherwise identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

DEADLINE FOR WRITTEN COMMENTS

All written comments, whether submitted at the hearing or by U.S. Postal Service or any other delivery service, or by e-mail or facsimile, must be received by the

Commissioner, c/o the contact person at the address listed above, **no later than 5:00 p.m. on July 22, 2009.**

All persons are invited to submit statements, arguments, or contentions relating to the proposed regulations by submitting them in writing to the contact person **no later than 5:00 p.m. on July 22, 2009.** In the alternative, statements, arguments, or contentions may be presented orally at the public hearing.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the CCR in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures.

Office of the Public Advisor
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for additional information.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Commissioner has prepared an Initial Statement of Reasons ("ISOR") that sets forth the reasons for the proposed regulations. Upon request, the ISOR and the text of the proposed regulations will be made available for inspection and copying. Requests for the ISOR and the text of the proposed regulations should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the ISOR, and any supplemental information, is contained in the Rulemaking File: REG-2007-00038 and is available for inspection and copying by prior appointment at 45 Fremont Street, 23rd Floor, San Francisco, California 94105, between

the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

Final Statement of Reasons

After it has been prepared, and upon request, the Final Statement of Reasons ("FSOR") will be made available for inspection and copying. Requests for the FSOR should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will be sent to all persons who have previously filed a request to receive notice of proposed rulemaking with the Commissioner.

WEBSITE POSTINGS

Documents concerning these proposed regulations are available on the CDI's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the link to 'Annual Financial Reporting' and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter "REG-2007-00038" (the CDI's regulation file number for these regulations) in the search field. Alternatively, search by keyword ("financial reporting," for example, or "audit committee"). Then, click on the 'Submit' button to display links to the various filing documents.

MODIFIED LANGUAGE

If the Commissioner adopts regulations which differ from those which have originally been made available but are sufficiently related to the original proposed regulations, the amended regulations will be made avail-

able to the public for at least 15 days prior to the date of adoption of the amended regulations. Interested persons should request a copy of the amended regulations from the contact person listed above.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 1050, 8254 and 8259, of the Fish and Game Code and to implement, interpret or make specific sections 1050, 2365, 7852.2, 8043, 8046, 8250–8259, 9002–9006 and 9010 of said Code, proposes to amend Section 122, Title 14, California Code of Regulations, relating to lobsters, permits to take.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under current regulations (Section 122, T–14, CCR) there is a listing of the classes of commercial lobster permits and requirements for obtaining and renewing lobster permits. The regulation also describes the transferable lobster operator permit qualification criteria and procedures; procedures and deadlines for permit renewal and forfeiture of non–renewed permits; and the procedures, timelines and initial limit on permit transfers. Current wording specifically lists equipment/activities that are illegal as well as equipment/activities that are a mandatory part of the commercial harvesting of lobster. Restricted lobster fishing areas are listed in the regulation.

The proposed regulation clarifies current wording by mandating traps used to commercially take lobster must meet the requirements of Fish and Game Code Section 9010. The amendment clarifies that lobster traps may only be used in Districts 18, 19, 20A, and that part of District 20 southerly of Santa Catalina Island between southeast Rock and China Point. The current intent is for the listed districts to be the exclusive areas for the legal commercial take of lobster but sentence structure does not fully support this intent. Editorial changes are proposed to improve the clarity and consistency of the regulations.

The proposal mandates that all lobster permit holders shall maintain lobster trap buoys in such a condition that buoy identification numbers are clearly readable. The purpose of marked buoys is to establish what permittee is utilizing a specific lobster trap. Ineffective methods of placing numbers on buoys or inadequate maintenance

of buoys hinders the ability of enforcement officers to identify the permittee using the trap. The proposal will specifically stipulate that the numbers on the buoy will be clearly readable so that the regulatory purpose of the buoy identification number is met.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 30, 2009 at the address given below, or by fax at (916) 653–5040, or by e–mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e–mailed to the Commission office, must be received before 5:00 p.m. on August 4, 2009. All comments must be received no later than August 6, 2009, at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sheri Tiemann at the preceding address or phone number. **Mr. Rob Allen, Enforcement Branch, Department of Fish and Game, (916) 651–9953 has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection,

timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal clarifies and strengthens the enforceability of portions of the current regulation.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 202 and 355 of the Fish and Game Code and to implement, interpret or make specific sections 202, 355, and 356 of said Code, proposes to amend Section 502, Title 14, California Code of Regulations, relating to waterfowl hunting.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and establish daily bag and possession limits. In addition to the five proposals contained herein, the U.S. Fish and Wildlife Service (Service), after analysis of waterfowl population survey and other data, may change federal regulations; if this occurs changes in existing and proposed regulations in California may be necessary. Changes in federal regulations for season opening and closing dates, elimination or creation of special management areas, season length, and daily bag limits for migratory birds may occur. Item 4 requires changes in the federal regulations and must be approved by the Pacific Flyway Council at its meeting on July 24,

2009. Item 5 (including the table below) provides a proposed range of season dates and bag limits for waterfowl. The Service will consider recommendations from the Flyway Council at their meeting on July 30, 2009. At this time, the California Breeding Pair Survey has not been conducted and the Service has not established federal regulation “frameworks” which will occur in August after the analysis of current waterfowl population survey, other data, input from the Flyway Councils and the public. Also, minor editorial changes are proposed to clarify and simplify the regulations and to comply with existing federal frameworks.

The Department’s proposals are as follows:

1. Increase the white-fronted goose daily bag limit to 6 geese per day in the Northeastern, Southern San Joaquin Valley, and Balance of State zones. Also, the white-fronted goose, Large and Small Canada goose daily bag limits will be collectively called dark geese in the Southern San Joaquin Valley and Balance of State zones.
2. Increase the Large Canada goose daily bag limit to 6 per day in the Southern San Joaquin Valley and Balance of State zones. Also, the white-fronted goose, Large and Small Canada goose daily bag limits will be collectively called dark geese in the Southern San Joaquin Valley and Balance of State zones.
3. Change the name of the Youth Hunting Days section to Youth Waterfowl Hunting Days.
4. Modify the opening date of the Sacramento Valley (West) Special Management Area to open concurrently with the general goose season in the Balance of State Zone. This proposal requires approval by the Pacific Flyway Council and the U.S. Fish and Wildlife Service.
5. Provide a range of waterfowl hunting season lengths (which may be split into two segments) between 38 and 107 days for all hunting methods. A range of daily bag limits is also given for ducks in all zones. Also, federal regulations require that California’s hunting regulations conform to those of Arizona in the Colorado River Zone. See the following table for season and bag limit ranges.

AREA	SPECIES	SEASONS	DAILY BAG & POSSESSION LIMITS
Statewide	Coots & Moorhens	Concurrent w/duck season	25/day. 25 in possession
Northeastern Zone <i>Season may be split for Ducks, Pintail, Canvasback and Scaup</i>	Ducks	Between 38 & 105 days	4-7/day, no more than 3-7 mallards, no more than 1-2 hen mallards, 0-3 pintail, 0-3 canvasback, 0-2 redheads, 0-7 scaup. Possession limit double the daily bag.
	Pintail	Between 0 & 105 days	
	Canvasback	Between 0 & 105 days	
	Scaup	Between 0 and 105 days	
	Geese	86-100 days	8/day, up to 6 white geese, up to 4-6 white-fronts, up to 2 Large Canada geese, only 1 Small Canada goose. Possession limit double the daily bag.
Southern San Joaquin Valley Zone <i>Season may be split for Ducks, Pintail, Canvasback and Scaup</i>	Ducks	Between 38 & 105 days	4-7/day, no more than 3-7 mallards, no more than 1-2 hen mallards, 0-3 pintail, 0-3 canvasback, 0-2 redheads, 0-7 scaup. Possession limit double the daily bag.
	Pintail	Between 0 & 105 days	
	Canvasback	Between 0 & 105 days	
	Scaup	Between 0 & 105 days	
	Geese	86-100 days	8/day, up to 6 white geese, up to 4-6 white-fronts, up to 4-6 Large Canada geese, up to 6 Small Canada geese (up to 6 dark geese). Possession limit double the daily bag.
Colorado River Zone	Ducks	Between 38 & 101 days	4-7/day, no more than 3-7 mallards, no more than 1-2 hen mallards or Mexican-like ducks, 0-3 pintail, 0-3 canvasback, 0-2 redheads, 0-7 scaup. Possession limit double the daily bag.
	Pintail	Between 0 & 101 days	
	Canvasback	Between 0 & 101 days	
	Scaup	Between 0 & 101 days	
	Geese	101 days	8/day, up to 6 white geese, up to 3 dark geese. Possession limit double the daily bag.
Southern California Zone <i>Season may be split for Ducks, Pintail, Canvasback and Scaup</i>	Ducks	Between 38 & 100 days	4-7/day, no more than 3-7 mallards, no more than 1-2 hen mallards, 0-3 pintail, 0-3 canvasback, 0-2 redheads, 0-7 scaup. Possession limit double the daily bag.
	Pintail	Between 0 & 100 days	
	Canvasback	Between 0 & 100 days	
	Scaup	Between 0 & 100 days	
	Geese	86-100 days	8/day, up to 6 white geese, up to 3 dark geese. Possession limit double the daily bag.
Balance of State Zone <i>Season may be split for Ducks, Pintail, Canvasback and Scaup</i>	Ducks	Between 38 & 100 days	4-7/day, no more than 3-7 mallards, no more than 1-2 hen mallards, 0-3 pintail, 0-3 canvasback, 0-2 redheads, 0-7 scaup. Possession limit double the daily bag.
	Pintail	Between 0 & 100 days	
	Canvasback	Between 0 & 100 days	
	Scaup	Between 0 & 100 days	
	Geese	86-100 days	8/day, up to 6 white geese, up to 4-6 white-fronts, up to 4-6 Large Canada geese, up to 6 Small Canada geese (up to 6 dark geese). Possession limit double the daily bag.
SPECIAL AREA	SPECIES	SEASON	DAILY BAG & POSSESSION LIMITS
North Coast	All Canada Geese	Between 0 & 105 days, except for Large Canada geese which can not exceed 100 days or extend beyond the last Sunday in January.	8/day, only 1 may be a Large Canada goose. Possession limit double the daily bag.
Humboldt Bay South Spit	All species	Closed during brant season	
Sacramento Valley (West)	White-fronted geese	Open concurrently with general goose season through Dec 14	2/day. Possession limit double the daily bag.
Mono Bay	All species	Open in designated areas only	Waterfowl season opens concurrently with brant season.
Martis Creek Lake	All species	Closed until Nov 18	
Northern Brant	Black Brant	Between 0 & 30 days, must end by Dec 15	2/day. Possession limit double the daily bag.
Balance of State Brant	Black Brant	Between 0 & 30 days, must end by Dec 15	2/day. Possession limit double the daily bag.
Imperial County	White Geese	Between 0 and 102 days	8/day. Possession limit double the daily bag.
YOUTH WATERFOWL HUNTING DAYS	SPECIES	SEASON	DAILY BAG & POSSESSION LIMITS
Northeastern Zone	Same as regular season	The Saturday fourteen days before the opening of waterfowl season extending for 2 days.	Same as regular season
Southern San Joaquin Valley Zone		The Saturday following the closing of waterfowl season extending for 2 days.	
Southern California Zone		The Saturday following the closing of waterfowl season extending for 2 days.	
Colorado River Zone		The Saturday following the closing of waterfowl season extending for 2 days.	
Balance of State Zone		The Saturday following the closing of waterfowl season extending for 2 days.	
FALCONRY OF DUCKS	SPECIES	SEASON	DAILY BAG & POSSESSION LIMITS
Northeastern Zone	Same as regular season	105 days	3/day, possession limit 6
Balance of State Zone		Between 38 and 107 days	
Southern San Joaquin Valley Zone		Between 38 and 107 days	
Southern California Zone		Between 38 and 107 days	
Colorado River Zone		Between 38 and 107 days	

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, June 25, 2009 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Yolo Fliers Club, Ballroom, 17980 County Road 94B, Woodland, California, on Thursday, August 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 31, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 3, 2009. All comments must be received no later than August 6, 2009, at the hearing in Woodland, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sherie Tiemann at the preceding address or phone number. **Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Com-

mission will exercise its powers under Section 355 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are intended to provide additional recreational opportunity to the public. The response is expected to be minor in nature.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 14. BOARD OF FORESTRY
AND FIRE PROTECTION**

[Published May 29, 2009]

NOTICE OF PROPOSED RULEMAKING

Fire Prevention Precautions, 2009

Title 14 of the California Code of Regulations (14 CCR)

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Amend:

§ 938.8 Inspection for Fire

PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 a.m., on Wednesday, August 5, 2009, at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to

discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., Monday, July 13, 2009. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551, 4551.5 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4428, 4513, 4551.5, 4561, 4584 and 21080.5.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Existing regulations require timber harvesting operators to conduct a diligent aerial or ground inspection

within the first two hours after cessation of felling, yarding, or loading operations each day during the dry period to prevent forest wildfires. The proposed regulation adds specificity for the type of ground inspection needed. The proposed regulation requires a foot patrol fire inspection to prevent wildfires ignited by operations utilizing mechanical felling machines equipped with a rotating metal blade. The proposed regulation is "pilot project" with a limited duration of three years and applicability limited to the Northern Forest Practice District.

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendments to 14 CCR § 938.8(a) introduce the list of requirements that a Licensed Timber Operator (LTO) would be required to do as part the expanded fire patrol inspection.

The proposed amendments to 14 CCR § 938.8(a)(1) specify the type of equipment which is subject to the foot patrol fire inspections. Only timber operations utilizing mechanical felling machines equipped with a rotating metal blade (either "hot saw" or intermittent, excluding chainsaw type bars or shears) are subject to the proposed foot patrol inspections.

The proposed amendments to 14 CCR § 938.8(a)(1)(A) establish the foot patrol and specifications for the fire suppression equipment that is required to be in the vicinity of the patrol. The requirement and equipment include a patrol by a person with a vehicle equipped with: 1) a serviceable 5 gallon backpack pump filled with water, 2) a shovel or McLeod fire tool, 3) either a double bit ax, or a serviceable chainsaw with a minimum 20 inch bar), and 4) communications equipment capable of summoning additional fire suppression resources or contacting the agency responsible for fire suppression. The proposed regulation requires the patrol person to maintain this inventory in their vehicle. If the vehicle used for the patrol contains the sealed fire tool box required by PRC 4428, this would satisfy the requirements of the fire tool inventory in the vehicle required by the proposed amendment.

The proposed amendments to 14 CCR § 938.8(a)(1)(B) and (C) establish the location of the patrol area, duration of a patrol, documentation of information about the conduct of the patrol, and fire inspection procedures to be deployed during the patrol.

The proposed amendments to 14 CCR § 938.8(a)(1)(D) require wood debris or chips accumulated in the cutting head to be cleaned-out by equipment operators at least every two hours during operations to prevent the build-up of vegetative material that could ignite and be discharged to start a fire.

The proposed regulation is a pilot project which will evaluate the efficacy of the regulation. The proposed amendment establishes an expiration date on December 31, 2012, for purposes of limiting the duration of the pilot project regulation. Additionally, the pilot project is limited to the Northern Forest Practice District.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is aware of cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These costs are related to the regulation imposing mandatory foot patrols for fire prevention. The costs are estimated to not result in a significant economic impact.
- Effect on small business: None. The Board has determined that the proposed amendments may affect small business because there are costs related to the regulation imposing mandatory foot patrols for fire prevention. The costs are estimated to not result in a significant economic impact.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKE-THROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office

at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- testified at the hearings,
- submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 22/MPP. DEPARTMENT OF SOCIAL SERVICES

ITEM#1 SB 1896, Requirements for Bedridden Persons in RCFEs

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held July 15, 2009, as follows:

July 15, 2009
Office Building #8
744 P St. Room 105
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language inter-

preter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on July 15, 2009.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Office of Regulations Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Title 22, Division 6, Chapter 8 (Residential Care Facilities for the Elderly), Section 87101 (Definitions), Section 87202 (Fire Clearance), Section 87208 (Plan of Operation), Section 87212 (Emergency Disaster Plan), Section 87455 (Acceptance and Retention Limitations), Section 87508 (Register of Residents), Section 87633 (Hospice Care for Terminally Ill Residents),

Section 87705 (Care of Persons with Dementia), and Section 87714 (Care of Bedridden Residents)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill (SB) 1896 (Ortiz), Chapter 817, Statutes of 2000, was enacted into law to allow bedridden persons to be admitted to, and remain in, specified licensed residential care facilities that secure and maintain an appropriate fire clearance. It also revised the definition of "bedridden," and required the California Department of Social Services (CDSS) and the Office of the State Fire Marshal (SFM), in consultation with the California Department of Developmental Services, to develop regulations to clarify fire safety and fire clearance requirements for specified residential care facilities. Those facilities include Residential Care Facilities for the Elderly (RCFEs) and residential care facilities that serve adults, the chronically ill, and children.

These regulations address the care of bedridden persons in RCFEs. SB 1896 provisions relating to RCFEs appear in Health and Safety Code Section 1569.72, which is part of California's RCFE Act. Other regulations addressing the care of bedridden persons in other facility types will be developed at a later date.

Prior to the enactment of SB 1896, existing law prohibited an RCFE from admitting or retaining a bedridden person, other than for a temporary illness or recovery from surgery. Current RCFE regulations pertaining to the care of the bedridden persons are outdated; they still prohibit the admission or retention of a bedridden person in an RCFE except on a temporary basis. However, since 2000, the Department has allowed bedridden persons to be cared for in RCFEs under the authority provided by Health and Safety Code Section 1569.72.

These regulations focus on RCFEs, in part, because of the significant amount of interest shown in 2007 by provider associations and advocacy groups in the statutes, regulations and procedures surrounding the admission and retention of bedridden persons in RCFEs. In response to this interest, the CDSS' Community Care Licensing Division (CCLD) developed an information release, CCL Information Release No. 2007-04, Bedridden Residents, which was issued June 13, 2007. This release provided information on applicable statutes and regulations that are associated with the care of persons who are bedridden. It is a public document, available on the CCLD website, and has been shared with providers, provider associations and advocacy groups.

The Department has not developed regulations for the care of the bedridden in RCFEs to date for several reasons. The Department believed it was prudent to wait until the SFM developed its bedridden regulations.

The SFM bedridden regulations became effective on March 16, 2005. The Department was then able to use the SFM regulations as background information to develop its regulation package.

Another issue affecting the development of the CDSS' bedridden regulations was the need to determine the parameters for the definition of "bedridden." Health and Safety Code Section 1596.72(b)(1) provides:

For the purposes of this section, "bedridden" means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

After much discussion and consideration over a number of years, the Department has concluded that it did not have the expertise to determine what constitutes "appropriate and sufficient care staff" and "necessary mechanical devices." Moreover, the CDSS' interpretation is that the statute does not mandate the CDSS to develop regulations for the purposes of determining that a resident is NOT to be considered bedridden under Health and Safety Code Section 1596.72(b)(1), but rather leaves it to the Department's discretion. Considerations related to this interpretation include:

- CCLD staff are not fire safety experts or healthcare professionals.
- With regard to fire and life safety protections, a determination of a resident's "bedridden" status is best made by local fire units who determine how many RCFE bedridden residents a facility may retain based on a number of factors such as the available resources of the unit, the geographical terrain and time it will take for the local unit to respond to an emergent call, the ability of a resident(s) to self-evacuate, or the ability of the local unit to assist with evacuation of a resident(s) as well as the number of residents involved.

Healthcare professionals are best equipped to determine a resident's bedridden status as medical conditions and associated limitations are identified by healthcare professionals.

- An RCFE licensee is responsible to plan for, coordinate and meet, either directly or through the facilitation of services, each resident's health and safety needs. This includes evaluation of resident needs in the areas of sufficient staffing, mechanical devices and safety precautions.
- Per Health and Safety Code Section 1596.33(d), CCLD is only required to make a site visit to RCFEs every five years except in the event of a complaint or under specified circumstances.

These proposed regulations incorporate direction for the care of the bedridden persons in RCFEs as outlined in CCL Information Release No. 2007-04. While not addressing "appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions" as referenced in Health and Safety Code 1596.72(b)(1) and addressed above, the proposed regulations do address the following: notification requirements; fire-clearance requirements; the need for a care plan for each bedridden resident; training requirements for direct care staff that care for bedridden residents; the need for awake night staff; access to ongoing consultation with health care professionals; and appropriate equipment and devices. The proposed regulations are consistent with the spirit of the federal Olmstead decision which protects the rights of individuals to live in a "home-like," least restrictive environment.

COST ESTIMATE

1. Costs or Savings to State Agencies: There is no fiscal impact for CDSS.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500-17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: There is no local assistance impact for CDSS.
4. Federal Funding to State Agencies: There is no impact to CDSS' federal funding.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The CDSS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION
OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Section 1569.30, Health and Safety Code. Subject regulations implement and make specific Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.54, 1569.62, 1569.625, 1569.72, and 1569.80, Health and Safety Code.

CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person: Robin Garvey (916) 657-2586
Backup: Sandra Ortega (916) 657-2586

GENERAL PUBLIC INTEREST

DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814

NOTICE OF CONTINUED PUBLIC HEARING

July 1, 2009 Workers' Compensation Claims Cost
Benchmark and Pure Premium Rates

File No. REG-2009-00015

Notice Date: May 13, 2009

NOTICE AND SUBJECT OF
CONTINUED PUBLIC HEARING

Notice is hereby given that the Insurance Commissioner will continue a public hearing in response to a filing, submitted on March 27, 2009, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB"), to consider the following:

- Approval of the Workers' Compensation Claims Cost Benchmark and advisory pure premium rates developed by the WCIRB as a rating organization on behalf of its member insurers to be effective July 1, 2009.
- Approval of amendments to the California Workers' Compensation Experience Rating Plan—1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent to be effective July 1, 2009.

This Public Hearing is a continuation of the hearing before the Insurance Commissioner held on April 28, 2009 in San Francisco, CA. The Notice of Proposed Action and Notice of Public Hearing in this matter was issued on March 30, 2009 and is incorporated herein by reference. On April 28, 2009 it was noted for the record in this matter that the hearing was to be continued on June 8, 2009 at 1:00 p.m. in Sacramento, CA, at a location to be announced, for additional information to be provided by the participants present and to obtain additional information, both written and testimonial, regarding the subjects noted above.

HEARING DATE AND LOCATION

The continued public hearing will be held to permit all interested persons the opportunity to present state-

ments or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time, and place:

June 8, 2009 — 1:00 p.m.
Department of Health Care Services
East End Complex Auditorium
1500 Capitol Avenue
Sacramento, California

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the continued public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

(916) 492-3187
(916) 324-1883 (FAX)
citkoc@insurance.ca.gov

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address, FAX number, or email address listed above no later than 5:00 p.m. on June 8, 2009.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this No-

tice of Proposed Action and Notice of Public Hearing dated March 30, 2009. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may be viewed or downloaded from the Regulatory Filings section of the WCIRB website (www.wcirbonline.org).

ACCESS TO RULE-MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to the WCIRB's filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in the Notice and informative digest dated March 30, 2009, or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Variances Issued to Alexandria Real Estate Equities by Department of Toxic Substances Control

On May 11, 2009, the Department of Toxic Substances Control issued variances to five Alexandria

Real Estate Equities (AREE) associated single party entities. Under the authority of section 25143, chapter 6.5, division 20 of Health and Safety Code, the variance waives hazardous waste manifesting requirements and allows the AREE entities (AREE-15, 19, 35, 36 and 37) to use bills of lading when transporting hazardous waste soils on specified public roads. The soils handled under this variance must be generated from excavation activities in, and managed within, the approximately 300-acre Mission Bay Area in San Francisco. These soils are considered hazardous waste due to lead concentrations. San Francisco Regional Water Quality Control Board oversees the management of the soils within the Mission Bay Area. Contact: Edward Nieto (916) 322-7893.

RULEMAKING PETITION DECISION

AIR RESOURCES BOARD

Editorial Note: Only the agency's decision on the petition is being printed below. For information about the various attachments referenced in the petition decision, please contact Mike Terris at 445-9815 or mterris@arb.ca.gov.

May 15, 2009

Ms. Hillary Arrow Booth
Mr. Timothy J. Swickard
Dongell Lawrence Finney LLP
Forty-Fifth Floor
707 Wilshire Boulevard
Los Angeles, California 90017

Dear Ms. Booth and Mr. Swickard:

On April 1, 2009, the Air Resources Board (ARB or Board) received a petition filed by your office on behalf of the California Trucking Association (CTA) pursuant to Government Code sections 11340.6 and 11340.7. The petition requests that the Board do the following:

1. Repeal the "Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate, California Code of Regulations (CCR), title 13, section 2477 (ATCM); or alternatively

2. Amend the ATCM by:
 - a. Staying enforcement for all current identification number and registration requirements while the American Trucking Association (ATA) petition challenging the United States Environmental Protection Agency's authorization of the ATCM is pending before the United States Court of Appeals for the District of Columbia Circuit; and, if the Court denies the challenge, to provide TRU owners and operators with six months from the date of the Court's decision to register their equipment.
 - b. Providing a two-year extension for owners and operators to meet the ultra-low-emission TRU (ULETRU) requirements for each piece of low-emission TRU (LETRU) compliant equipment ordered by a TRU owner or operator before July 17, 2009.
 - c. Providing an allowance for an hour meter exemption with thresholds set accordingly.
 - d. Including a fleet average provision that would allow TRU owners and operators to fairly and reasonably phase-in compliant technology throughout their fleets.
 - e. Conducting a review and analysis of existing and available technology, and make modifications to the ATCM based upon those findings such that the requirements appropriately correspond to available technology.
3. Grant an immediate six-month stay of enforcement of all aspects of the ATCM so that reconsideration and amendments requested above may be adequately considered.

We have reviewed and evaluated your request and the information you have provided in support of the above requested actions. For the reasons set forth below, I am denying your requests.

Background

The Transportation Refrigeration Unit (TRU) Airborne Toxic Control Measure (ATCM) is designed to reduce the public's exposure to diesel particulate matter (PM), other toxic contaminants, and criteria air pollutants from TRUs. It was approved by the Board on February 26, 2004, and formally adopted on September 28, 2004. In approving the ATCM for adoption, the Board specifically found that the ATCM was necessary, cost-effective, and technologically feasible. (Health & Saf. Code, §§ 39665-39666 & 43013.) The ATCM applies to owners and operators of "in-use" diesel-fueled TRUs and TRU generator sets that operate in California, including out-of-state-based TRUs and TRU gen-

erator sets that operate in California. Staff estimates that there are approximately 32,000 California-based TRUs operating in California. There are also approximately 7,500 on-highway truck and trailer equipped TRUs and 1,700 railcar TRUs that are based outside of California that operate in California at any given time.

The ATCM requires in-use TRU engines to meet specific in-use performance standards that vary by horsepower range. The TRU in-use performance standards have two levels of stringency that will be phased-in over time, beginning in December 2008 (extended to July 17, 2009) and ending by 2020. The ATCM also requires all California-based TRU operators to register their TRUs with ARB by January 31, 2009 (extended to March 17, 2009). Operators that own or lease terminals in California where they operate TRUs are required to submit an Operator Report by January 31, 2009 (extended to March 17, 2009).

ARB adopted the ATCM under authority granted by the Legislature to adopt emission standards and regulations for TRUs. (Health & Saf. Code, §§ 39618, 39650–39674, 43013, & 43018.) Specifically, ARB has been directed to reduce emissions of all possible toxic air contaminants (TAC) from nonvehicular sources to the lowest level achievable through application of the best available control technology or a more effective control method. (Health & Saf. Code, § 39666.) As stated, ARB has found diesel PM to be a TAC, and it adopted the ATCM in direct response to the Legislature's mandate. In adopting the ATCM, the Board found that more than 25 percent of total PM emissions from TRUs come from out-of-state TRU systems that operate in California, and that these emissions are concentrated around local distribution centers, many of which are located nearby residential areas and schools, and impose significant health risks to the State's residents.

Additionally, the federal Clean Air Act (CAA) requires that California achieve national ambient air quality standards (NAAQS) for particulate matter of 2.5 microns or less (PM_{2.5}) in the South Coast and San Joaquin Valley Air Basins by 2014. (See CAA § 209.) California has submitted a State Implementation Plan to the United States Environmental Protection Agency (U.S. EPA) demonstrating that the required emission reductions will be achieved (CAA § 210.). In its submittal, California relied upon the emissions reductions forecasted to be achieved by the ATCM.

The CAA also requires that ARB obtain authorization from U.S. EPA prior to enforcing emission standards and other requirements for new and in-use non-road engines, which include TRUs (CAA § 209(e)(2)). ARB requested authorization from U.S. EPA for the ATCM, on March 28, 2005. A hearing was held before U.S. EPA on January 23, 2006, and the authorization request was granted on January 9, 2009 (74 Fed.Reg.

3030 (January 16, 2009)). In granting the authorization, U.S. EPA found that ARB provided TRU stakeholders with sufficient lead time to comply with the regulation, given consideration to the costs necessary to comply in the time provide. Having delayed implementation of the regulation until July 17, 2009, to provide additional compliance flexibility to stakeholders, the regulation provided stakeholders with almost five and one-half years of lead time from the date that the Board approved the ATCM for adoption in February 2004, and almost four years and ten months of lead time from the date that the ATCM was formally adopted in September 2004. As U.S. EPA found, and contrary to the contentions of CTA, technology presently exists to meet the low emission TRU (LETRU) emission standards in 2009: new engines that meet LETRU standards have been available since January 1, 2008, remanufactured engines have been available since 2008, and three verified diesel emission control strategies (VDECS) presently available as retrofits.¹ As CTA knows, the ATA has filed a petition challenging U.S. EPA's authorization for the ATCM, and the matter is presently pending in the appellate.

Discussion of Petition

1. Repeal of ATCM

CTA argues that ARB should repeal the ATCM because it is preempted by federal law and violates TRU owners' federal due process rights. Specifically, CTA alleges that the ATCM:

- Unlawfully interferes with the rights of motor carriers to engage in interstate commerce and violates the preemption prohibiting states from regulating motor carriers under the Federal Aviation Administration Authorization Act of 1994 (FAAA Act).
- Violates the Fourteenth Amendment to the United States Constitution by depriving TRU owners and operators of their business licenses, the right to engage in business in California and subjecting them to criminal and civil penalties, without procedural due process.

CTA's request that the ATCM be repealed because it violates the U.S. Constitution or is unenforceable under federal law must be rejected. CTA and ATA previously submitted comments during the course of the ATCM ru-

¹ Since compliance is based upon model year, TRU owners also have the option of replacing an existing engine for which compliance is required with a newer used engine and thereby delay further compliance for seven years from the date of manufacture of the replacement engine. For example, if a TRU owner chose to replace a 1999 model year engine with a 2006 model year engine to meet the July 17, 2009 compliance date, it could avoid having to buy a new, more costly engine.

lemaking arguing that the ATCM violated the “dormant” Commerce Clause of the U.S. Constitution, which ARB found to be without merit. (See *Final Statement of Reasons* for the ATCM, excerpts of which are attached hereto as Attachment A.) Similarly, ARB does not believe that the ATCM is preempted under FAAA Act in that the preemption must be harmonized with the authority granted to California under the CAA. (See examples, CAA §§ 110 & 209(e)(2)(A).) Neither the motor carrier preemption of the FAAA Act (49 U.S.C. § 14501(c)) nor its legislative history expressly states or impliedly suggests that the authority granted to California under the CAA was effectively repealed by enactment of the preemption. Finally, the penalty provisions of the ATCM (Cal. Code Regs., tit. 13, § 2477(h)) specifically incorporate the applicable penalty statutes of the Health and Safety Code and do not deny due process to any TRU owner or operator. While persons who fail to comply with the regulation may be directly cited for any single violation of \$5,000 or less or any cumulative violations totaling less than \$15,000, the cited person has the right to request an evidentiary hearing before an administrative law judge, and penalties are effectively stayed upon filing of the hearing request. (Cal. Code Reg., tit. 17, §§ 60075.17 & 60075.20.) For penalties greater than \$5,000 for a single violation and \$15,000 for multiple violations, ARB must file a complaint in either state or administrative courts, and any cited person would have the opportunity of notice and a full and fair hearing. (Cal. Code Reg., tit 17, § 60075.1 et seq.) In all cases, the burden is on ARB to prove that a violation has been committed, and no penalties must be paid until ordered by the court.

Accordingly, for the reasons set forth above, CTA’s request that ARB conduct a hearing to consider repealing the ATCM must be denied.

2. Amend the ATCM

In the petition, CTA requests that the Board consider five specific amendments to the ATCM, which it claims are designed to bring the ATCM into compliance with federal law and to permit the TRU owners and operators a fair opportunity to comply with the ATCM. These amendments include: a) staying the TRU registration requirements, b) extending final compliance date by two years for TRU owners who comply with the TRU ATCM by July 17, 2009, c) providing an exemption for TRUs that use an hour meter and operate the TRU below established thresholds, d) including a fleet averaging provision, and e) conducting a technology review ARB addresses each of the requested amendments in turn.

a) Stay of Registration Requirements

CTA contends that ARB should stay the registration requirements of the ATCM while the ATA petition is

pending before the federal appellate court. ARB must reject this request for the following reasons: First, adopted regulations are presumed valid (see Gov. Code § 11343.6) and deference should be granted to U.S. EPA’s determination that ATA has failed to overcome the presumption that authorization should be granted for the ATCM. (See *Motor and Equipment Manufacturers Association v. EPA* (D.C. Cir. 1979) 626 F.2d 1095, 1121) [“California’s regulations, and California’s determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them.”] Second, ATA has not sought a stay of the ATCM in its actions challenging U.S. EPA’s authorization. Third, and most importantly, the registration requirements are initially necessary for ARB to properly assess the inventory of California-based TRUs that operate in California. No issue of technical feasibility or cost exists for TRU owners or operators in complying with the registration requirement, and CTA has presented no evidence to the contrary. Registration is free and simply requires filling out a short application. Indeed, registration will reduce inspection times significantly, saving time and resources for TRU operators. Over 45,000 TRU operators have registered as of April 15, 2009. Fourth, to the extent that CTA is claiming that a stay is appropriate because of conflict with federal law, see discussion regarding denial of request that ATCM be repealed outlined above in section 1.

b) Two-year Extension for TRUs Complying Before July 17, 2009.

CTA requests that TRU owners who comply with the ATCM before July 17, 2009, be provided with a two-year extension in having to comply with the ULETRU standard. To the extent that all 2003 and later model year TRUs are not required to comply with the LETRU standard, ARB presumes that CIA is requesting an extension only for owners of 2002 and earlier model year TRUs.² For example, owners of TRUs manufactured in 2001 or earlier who comply by installing a 2008 engine or a Level 2 VDECS, would not be required to meet the ULETRU standard until 2015. And, owners of TRUs manufactured in 2002 who elect to comply by installing a 2009 engine or a Level 2 VDECS would not be required to meet the ULETRU standard until 2016. Indeed a TRU owner who elects to comply in 2009 by installing a Level 3 VDECS would not have any further compliance requirements under the ATCM.

² CTA states the ATCM requires all TRU owners to replace or retrofit engines twice between 2008 and 2020. This is not true. As stated above, the ATCM provides that only owners of pre-2003 model year TRUs would have to take compliance actions twice.

For the following reasons, ARB is denying the request for extension. First, the ATCM presently includes a provision that provides owners of 2002 and older TRUs with a one-year delay from having to comply with the 2015 and 2016 ULETRU compliance dates for each year of early compliance before the 2008 and 2009 LETRU standards implementation dates. To the extent that a TRU owner chose not to take advantage of this incentive, they did so willingly in that, as previously stated, viable compliance options have been available to meet the 2008 and 2009 deadlines for some time. The purpose of the adopted incentive was to encourage TRU owners to remove the highest-emitting TRUs from their fleets early so that immediate risk reductions could be achieved for communities located near distribution centers and other locations where TRUs operate and large quantities of TACs are emitted. Second, no technical feasibility issue exists to justify the requested two-year extension. By 2015, ULETRU compliant TRU engines will have been available in the market for at least three years, and Level 3 VDECS for at least nine years. Additionally, as previously stated, although a TRU owner of a 2002 or older model year TRU could potentially need to take additional action to meet the ULETRU standard in 2015 or 2016, respectively, this could be avoided if the TRU owner chose to initially comply in 2009 by installing a Level 3 VDECS. In either event, CTA has provided no justification why an additional two-year compliance extension should be granted to meet the 2015 or 2016 deadlines. Third, providing the proposed extension beyond that which is provided in the ATCM would effectively reward those TRU owners who have elected to not comply with the regulations until the eleventh hour before the extended compliance deadline, even though they have been on notice of the regulation and the first compliance dates for at least five years.

c) Hour Meter Exemption

The petitioner requests that the Board approve an amendment that would provide an exemption for those TRUs on which an owner installs an hour meter and operates below established time thresholds. During the course of the 2003–2004 rulemaking for the ATCM, ARB staff considered and rejected a proposed alternative to the regulation that would have provided for a low-use exemption, which in concept, if not name, is similar to what CTA is now proposing. The low-use exemption was rejected at the time of initial consideration of the ATCM because staff concluded that TRU systems that would have utilized the exemption would tend to be the oldest and dirtiest TRUs. On average, pre-2002 TRU engines emit about three times the diesel PM and about one and one-half times the oxides of nitrogen (NOx) of a 2008 TRU engine, and their continued use

would impose a significant health risk to communities located near distribution centers and businesses that receive refrigerated goods. Additionally, staff concluded that determining the emissions and public health impacts from such an exemption could not be accurately done. It further found that the recordkeeping and reporting requirements that would be necessary to effectively implement and monitor the exemption would be costly and burdensome to both the TRU owner and ARB enforcement officials, ultimately undermining effective enforcement of the exemption.

CTA has not provided sufficient evidence to persuade ARB that the above circumstances have significantly changed since the ATCM was initially considered and that it is now appropriate to reconsider the proposed low-use exemption. To the extent that CTA is arguing that the exemption should be adopted to provide relief to TRU owners who will incur higher compliance costs than anticipated by staff in 2004, the argument is unavailing. Although the costs for replacement engines and verified retrofit devices are somewhat higher than initially projected, the revised costs are still well within the cost effectiveness range of other diesel measures adopted by the Board. Additionally, CTA's claims that the Private Fleet Rule (proposed Cal. Code Reg., tit. 13, § 2025) will require TRU owners to pay for significant upgrades to their truck fleets at the same time that they must comply with the ATCM is also not convincing. The TRU ATCM is the only in-use diesel regulation affecting TRU operators over the next 18 months. Other nonpublic sector in-use truck regulations include a compliance phase-in schedule and do not require compliance until January 1, 2012.

d) Fleet Average

CTA requests that ARB include a fleet averaging provision that would allow TRU owners to phase-in compliant technology throughout their fleets in a fair and reasonable manner. As with the low-use exemption, ARB staff considered and rejected a fleet average provision when it initially developed the ATCM. Instead, staff concluded that a model-year phase-in provided equal fairness to fleets, potentially providing a number of years for fleet compliance. Because of the short useful life of TRU engines and the fact that the oldest engines are the dirtiest, ARB determined that a model-year phase-in would provide the greatest emission/health-risk reductions, in such an approach would ensure that the oldest engines be upgraded first and would not result in an overly onerous burden to TRU fleets. It clearly would not be any more onerous than a stringent fleet average target that would by legislative directive have a similar purpose of achieving significant emission and health risk reductions as expeditiously as possible. (See Health & Saf. Code, §§ 39602.5, 39665,

39666, 43013(h), & 43018.) Such stringent fleet average targets, like the model-year phase-in, would effectively require fleets to upgrade their dirtiest engines first. Additionally, designing an effective and enforceable fleet average program for TRUs would have required additional recordkeeping and reporting burdens on fleets and would be difficult to monitor compliance and effectively enforce.

e) Conduct Technology Review

CTA requests that the ATCM be amended to provide that the Board conduct a review and analysis of existing and available technology and that it modify the ATCM to address those findings. At this time, such an amendment is unnecessary. As indicated above, technology for compliance with the ATCM has existed for a number of years. Although development of verified retrofit technology has been slower than initially forecasted, three emission control devices are presently verified. There are two Level 2 and one Level 3 VDECS currently available. VDECS manufacturers indicate they have emission control units and necessary parts in stock and ready for shipment. In addition, one Level 2 diesel particulate filter (DPF) extension verification and one Level 3 DPF are expected to be verified by the end of May 2009.

Given the relatively short useful life of TRUs, staff anticipates that most TRU owners will elect to replace existing engines in TRU systems with new or remanufactured engines, rather than with VDECS, and compliant engines have been in the marketplace for two years. Indeed, ARB staff has been informed that replacement engines are currently in stock with next-day delivery being quoted.

ARB staff has and will continue to closely monitor the development and verification of diesel emissions control strategies for TRUs. Over the past five years, staff has conducted a series of workshops, meetings, and conference calls to gather and share information with stakeholders. Staff has also provided stakeholders with information on manufacturers of diesel emission control strategies and persons to contact within those companies. It has also provided TRU owners and operators with, among other things, the latest information on available VDECS, guidance regarding proper installation and maintenance of VDECS, and names of VDECS installers.

Engine and VDECS manufacturers indicate that the problem to date has not been supply, but demand. Although the regulation has provided TRU owners with more than five years of lead time before compliance is required and has offered incentives for early compliance, many owners have disregarded the regulation and have failed to take action to comply. Both engine and VDECS manufacturers, however, have assured ARB that they have sufficient supplies of compliant

product available provided owners order equipment now. In this regard, ARB issued a Regulatory Advisory on March 27, 2009, recommending that TRU owners make their compliance decisions early, showing good-faith efforts to comply and avoid any bottlenecks that could develop as the July 16, 2009, grace period end date gets closer. (The Regulatory Advisory is posted on the TRU regulatory website at: <http://www.arb.ca.gov/diesel/tru/documents/advisory08-15-r3.pdf>, a copy of which is attached hereto as Attachment B.) The advisory further informs owners that in the case of supply availability problems, TRU owners could avoid non-compliance by demonstrating their good faith efforts to comply by providing documentation that they purchased complying product in sufficient time for it to be installed by the deadline, but that manufacturer or installer delays prevented compliance.

3. Stay of Enforcement

CTA argues that ARB should grant an immediate six-month stay of enforcement of all aspects of the TRU ATCM so that the reconsideration and amendments requested may be adequately considered. CTA further argues that the stay is needed because compliance with the TRU ATCM cannot be attained by many owners and operators due to the lack of technology and the lack of available funding that would allow TRU owners to simultaneously meet different ARB regulatory requirements affecting in-use trucks.

For the reasons set forth in sections 1 and 2 above, ARB does not believe a six month stay is needed to adequately consider the petitioner's proposed repeal of the ATCM or amendments. CTA has failed to present sufficient information or reasons that would support its argument that ARB needs six months to further consider the merits of this petition. Moreover, as explained in section 2.e), there is no basis for CTA's claim that compliance is not achievable because technology does not presently exist.

Concerning its claim of lack of available funding, the ATCM's implementation and compliance was never contingent upon incentive funding being available. Staff has advised affected TRU owners that they may want to apply for funding under various programs, one of which is the Carl Moyer Program, which provides funding to successful applicants who install complying equipment three years prior to the regulatory compliance date. We have also advised TRU owners of a number of financing programs that may assist TRU operators, including: Cascade Sierra Solutions, Rural Assistance Center/Community Development Transportation Lending Services, and Rypos lease-to-buy program. (See document entitled "Funding Opportunities for TRU ATCM Compliance" posted on the TRU website at: <http://www.arb.ca.gov/diesel/tru/documents/>

[tru finance options.pdf](#), a copy of which is attached hereto as Attachment C.) Finally, the six-month stay request is not related to costs of multiple ARB in-use regulations requiring simultaneous upgrades to in-use trucks. As stated earlier, the TRU ATCM is the only in-use diesel regulation affecting TRU operators over the next 18 months. Other nonpublic sector in-use truck regulations include a compliance phase-in schedule and do not require compliance until January 1, 2012.

Conclusion

While denying your petition, I am hopeful that you will engage in discussions with staff to address issues that may prevent us from having a fully compliant TRU fleet by July 17, 2009. ARB is committed to working cooperatively with you and CTA to address these issues in a way that is fair for all TRU operators and achieves the needed public health protection for the citizens of California.

If you have questions regarding the decision on this petition or would like to discuss the regulation, please contact Mr. Mike Scheible, Deputy Executive Officer, at (916) 322-2890 or mscheibl@arb.ca.gov, or Mr. Mike Terris, Senior Staff Counsel, Office of Legal Affairs, at (916) 445-9815 or mterris@arb.ca.gov.

Sincerely,

/s/

James N. Goldstene
Executive Officer

Attachments

cc: Mr. Mike Scheible
Deputy Executive Officer

Mr. Mike Terris
Senior Staff Counsel
Office of Legal Affairs

OAL REGULATORY DETERMINATION

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS

(Pursuant to Government Code Section 11340.5
and Title 1, section 270, of the
California Code of Regulations)

CALIFORNIA PRISON INDUSTRY AUTHORITY

STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW

2009 OAL DETERMINATION NO. 11
(OAL FILE NO. CTU2008-1014-01)

REQUESTED BY: BRADLEY VANDYKE

CONCERNING: JOB ASSIGNMENT PRACTICES FOR INMATES
EMPLOYED BY THE CALIFORNIA PRISON INDUSTRY AUTHORITY

DETERMINATION ISSUED
PURSUANT TO GOVERNMENT CODE SECTION
11340.5.

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600¹ and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations, title 1, section 250.² OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

CHALLENGED RULE

The rule challenged in the petition is California Prison Industry Authority's (CALPIA) job assignment

¹ Unless otherwise specified, all references are to the Government Code.

² As defined by title 1, section 250(a), an "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

practice of hiring Level II inmates in Level III CALPIA work areas.

DETERMINATION

OAL determines that the challenged rule meets the definition of “regulation” in Government Code section 11342.600, and should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

In February 2008, an inmate³ at California State Prison, Solano (CSP, Solano) submitted an appeal to prison management and CALPIA claiming that CSP, Solano was “illegally” placing Level II inmates into Level III CALPIA work areas.⁴

On April 11, 2008, T. Moore, P.I. Administrator at CSP, Solano, responded to the appeal stating:

This decision by me was based purely on business practices and what is best for PIA as an organization to run as a business, to be competitive, satisfy customers and ultimately make a profit. . . . Since PIA began employing Level II inmates approximately three (3) years ago, the Level III work areas have greater operating stability.

. . .

The actual plan was to reach an optimum goal of approximately 50% of the workforce from Level II so operations can function during modified program. As of February 2008 that goal has been attained. PIA continues to hire Level III inmates if they meet specific criteria and as positions become available.

³ The inmate who submitted the appeal is not the Petitioner.

⁴ CDCR facilities are divided into different security levels depending on the amount of security necessary to ensure the safety of inmates and the public. Inmates are assigned to a security level based upon the inmate’s classification score. A facility may include one or more security levels:

Level I: Open dormitories, without a secure perimeter.

Level II: Open dormitories, with secure perimeter fences and armed coverage.

Level III: Individual cells, fenced perimeters and armed coverage.

Level IV: Cells, fenced or walled perimeters, electronic security, more staff and armed officers both inside and outside the facility.
SHU: Security Housing Unit. The most secure area within a level IV prison designed to provide maximum coverage.

RC: Reception Center. Provides short term housing to process, classify, and evaluate incoming inmates.

Cond: Condemned. Holds inmates with death sentences.

http://www.cdcr.ca.gov/Career_Opportunities/POR/docs/CDCR_map_new.pdf (Viewed April 7, 2009)

. . .

Solano is not the only institution to mix custody levels in their areas. At least four other institutions use the same practice. It makes good sense from a programming and business standpoint.

The appeal was denied and on October 14, 2008, Bradley Van Dyke (Petitioner) submitted a petition to OAL challenging the job assignment practice of hiring Level II inmates in Level III CALPIA work areas as an underground regulation.

CALPIA did not submit a response to the petition.

UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

(a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency issues, utilizes, enforces, or attempts to enforce a rule that meets the definition of a “regulation” as defined in section 11342.600 and should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rule is a “regulation” subject to the APA. This analysis will determine (1) whether the challenged rule is a “regulation” within the meaning of section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).⁵

The first element of a regulation is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. In this case, the hiring practices of CALPIA, including determining which security level of inmates will be employed in the various jobs and work spaces, apply to inmates of California prisons who are seeking employment with CALPIA. This is a clearly defined class of persons. The first element of *Tidewater* is, therefore, met.

The second *Tidewater* element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. CALPIA was created in 1982 as a semiautonomous state agency⁶ to operate California's prison industries in a manner similar to private industry. Penal Code section 2801 establishes the purposes of CALPIA as:

(a) To develop and operate industrial, agricultural, and service enterprises employing prisoners in institutions under the jurisdiction of the [CDCR], which enterprises may be located either within

those institutions or elsewhere, all as may be determined by the authority.

(b) To create and maintain working conditions within the enterprises as much like those which prevail in private industry as possible, to assure prisoners employed therein the opportunity to work productively, to earn funds, and to acquire or improve effective work habits and occupational skills.

(c) To operate a work program for prisoners which will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program, and one which will provide goods and services which are or will be used by the [CDCR], thereby reducing the cost of its operation.

The job assignment practices established by CALPIA, including the determination of which security level of inmates will be employed in the various jobs and work spaces, are part of the "working conditions within [CALPIA's] enterprises." The job assignment rule stated in the response to the inmate's appeal is part of CALPIA's statutory mandate to create and operate the various enterprises employing inmates. It, therefore, implements, interprets or makes specific Penal Code section 2801. The second element of *Tidewater* is, therefore, met.

CALPIA's job assignment practice of hiring Level II inmates in Level III CALPIA work areas, therefore, meets the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly*." (Emphasis added.)

CALPIA did not identify an express statutory exemption from the APA, nor was OAL able to identify an express statutory exemption.

CONCLUSION

In accordance with the above analysis, OAL determines that the challenged rule meets the definition of "regulation" in Government Code section 11342.600, does not fall within an express statutory exemption from the APA, and should have been adopted pursuant to the APA.

⁵ Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

⁶ An example of the semiautonomous nature of CALPIA is that Penal Code section 2800 establishes CALPIA within CDCR; however, Penal Code section 2809 permits CALPIA to recruit and employ civilian staff, establish recruiting, testing, hiring, promotion, disciplinary, and dismissal procedures and practices for both civilian and inmate staff which meet the unique personnel needs of CALPIA. The general manager is the appointing authority for all personnel of CALPIA.

Date: May 12, 2009

/s/
SUSAN LAPSLEY
Director

suant to California Code of Regulations, title 1, section 280, OAL must suspend all action on this petition.

/s/
Kathleen Eddy
Senior Counsel

DEPARTMENT OF MENTAL HEALTH

CERTIFICATION PURSUANT TO 1 CCR 280

**SUSPENSION OF
ACTION REGARDING
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**SUSPENSION OF ACTION REGARDING
UNDERGROUND REGULATIONS**

**(Pursuant to Title 1, section 280, of the
California Code of Regulations)**

On April 10, 2009, the Office of Administrative Law (OAL) received a petition challenging Special Order No. 901.04 issued by the Department of Mental Health (DMH) as an alleged underground regulation. Special Order No. 901.04 directs DMH State Hospitals to be both tobacco-free and smoke-free by July 1, 2009.

On May 12, 2009, DMH certified to OAL that Special Order No. 901.04 had been rescinded; therefore, pur-

I, Cynthia A. Radavsky, Deputy Director of Long Term Care Services, California Department of Mental Health (Department), hereby certify:

1. The Department received on or about April 10, 2009, a copy of a petition from Disability Rights California that was addressed to the California Office of Administrative Law challenging as underground regulation Special Order No. 901.04. A copy of the petition is attached hereto as Exhibit A.
2. Special Order No. 901.04, which reflects an "Upon Approval" effective date, is still being reviewed and revised, and has not been issued by the Department. As such, the Department never did and will not issue, use, enforce, or attempt to enforce the alleged underground regulation.
3. A copy of the certification was sent to the petitioner by certified mail, and a copy of the receipt is attached hereto as Exhibit B.

/s/
Cynthia A. Radavsky
Deputy Director
Long Term Care Services
California Department of Mental Health

Dated 5-12-09

**QUARTERLY INDEX
OF REGULATORY ACTIONS**

**Quarterly Index of Regulatory Actions
January 1, 2009 — March 31, 2009**

This Quarterly Index lists regulatory actions during the period indicated, sorted alphabetically by agency. The file types are: C = Certificate of Compliance, E = Emergency, EON = Emergency by Operational Necessity, F = Filed with SOS Only, FP = Filed and Printed Only, N = Non-regulatory, P = Print Only, R = Resubmittal, S = Regular Submittal.

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Air Resources Board	2009-0202-03	S	Zero-Emission Vehicle Regulations	APPROVAL
Air Resources Board	2008-1204-04	S	Verification Procedures	APPROVAL
Air Resources Board	2009-0129-01	N	Oceangoing Incineration	APPROVAL
Board of Barbering and Cosmetology	2008-1231-01	SR	Cosmetology Curriculum Regulations	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Board of Barbering and Cosmetology	2009-0219-01	N	Cosmetology Curriculum	APPROVAL
Board of Barbering and Cosmetology	2008-1231-02	SR	Esthetician Curriculum Regulations	APPROVAL
Board of Barbering and Cosmetology	2009-0219-02	N	Barbering and Cosmetology Instructors Fees	APPROVAL
Board of Behavioral Sciences	2008-1212-04	S	Acceptance of Degrees from Approved Institutions	APPROVAL
Board of Chiropractic Examiners	2009-0120-02	S	Letter of Admonishment	APPROVAL
Board of Chiropractic Examiners	2009-0115-02	S	Chiropractic Quality Review Panels	APPROVAL
Board of Education	2008-1204-02	S	Follow-Up Adoptions	APPROVAL
Board of Education	2009-0106-02	SR	Instructional Materials – Social Content Review	APPROVAL
Board of Education	2009-0211-02	S	Special Education – Nonpublic Schools	APPROVAL
Board of Equalization	2009-0126-05	S	Relief from Liability	APPROVAL
Board of Equalization	2008-1120-02	N	Responsible Person Liability	APPROVAL
Board of Equalization	2009-0126-01	S	Miscellaneous Services Enterprises	APPROVAL
Board of Equalization	2008-1223-03	N	Interstate and Foreign Commerce	APPROVAL
Board of Forestry and Fire Protection	2009-0109-01	N	Form Date Change, 2009	APPROVAL
Board of Occupational Therapy	2009-0116-07	S	Supervision Parameters	APPROVAL
Board of Optometry	2009-0122-01	S	Optometry Fees Increase	WITHDRAWN
Board of Pharmacy	2009-0211-01	N	Section 100 Changes	APPROVAL
Board of Vocational Nursing and Psychiatric Technicians	2008-1230-03	E	Fingerprinting/Fees Regulations	APPROVAL
Business, Transportation and Housing Agency	2009-0126-02	C	Farm Loans	APPROVAL
California Apprenticeship Council	2008-1231-04	S	Employment of Apprentices on Public Works	WITHDRAWN
California Gambling Control Commission	2008-1230-01	S	Statewide Involuntary Exclusion List	APPROVAL
California Gambling Control Commission	2009-0123-01	S	Extension of Credit, Check Cashing, ATMs and Unclaimed Property	APPROVAL
California Highway Patrol	2009-0123-02	S	General Hazardous Materials Regulations	APPROVAL
California Highway Patrol	2008-1218-01	S	Wheelchair School Buses	DISAPPROVAL
California Horse Racing Board	2009-0121-04	S	Application for License to Operate a Minisatellite Wagering Facility	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
California Horse Racing Board	2009-0126-04	S	Altering of Sex of Horse	APPROVAL
California Horse Racing Board	2009-0121-03	S	Operation of an Advance Deposit Wagering Account for all Entities	APPROVAL
California Horse Racing Board	2009-0121-02	S	Provisional Exercise Rider	APPROVAL
California Institute for Regenerative Medicine	2009-0127-03	S	Grants Administration Policy for Academic	WITHDRAWN
California Institute for Regenerative Medicine	2008-1219-02	S	Grant Administration Policy for Major Facilities	APPROVAL
California Integrated Waste Management Board	2009-0102-01	S	Gas Monitoring and Control Compliance Deadlines	APPROVAL
California Pollution Control Financing Authority	2009-0107-04	C	CAL ReUSE	APPROVAL
California Pollution Control Financing Authority	2009-0202-02	E	California Capital Access Program for Small Business	APPROVAL
California School Finance Authority	2009-0205-03	S	State Charter School Facilities Incentive Grant	APPROVAL
Commission on Peace Officer Standards and Training	2009-0116-02	S	Professional Certificates and Certificate Replacement	APPROVAL
Commission on Teacher Credentialing	2008-1120-03	S	Single Subject Teaching Credential Authorization	APPROVAL
Commission on Teacher Credentialing	2009-0121-05	P	Conflict-of-Interest	APPROVAL
Commission on Teacher Credentialing	2008-1125-10	SR	Multiple and Single Subject Cred Requirements	WITHDRAWN
Commission on Teacher Credentialing	2009-0209-01	SR	Multiple and Single Subject Credential Requirements	APPROVAL
Corrections Standards Authority	2009-0112-01	EON	2007- Local Youthful Offender Rehabilitative Facilities Construction Funding Program Regulations	APPROVAL
Delta Protection Commission	2009-0129-02	S	Amend Appeal Procedure Regulations	APPROVAL
Department of Community Services and Development	2008-1210-02	P	Conflict-of-Interest Code	FILE_PRINT_ONLY
Department of Conservation	2009-0116-04	S	Signature Definition and Electronic Reporting	APPROVAL
Department of Corrections and Rehabilitation	2009-0121-01	EON	Senate Bill 618 Regulation Revisions	APPROVAL
Department of Food and Agriculture	2009-0218-06	C	Oriental Fruit Fly Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0219-03	SR	Poultry Meat Inspection	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Department of Food and Agriculture	2008-1126-02	C	Japanese Beetle Eradication Area	APPROVAL
Department of Food and Agriculture	2008-1204-03	S	Poultry Meat Inspection	WITHDRAWN
Department of Food and Agriculture	2009-0106-03	C	Light Brown Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0303-02	E	Light Brown Apple Moth Eradication Area	APPROVAL
Department of Food and Agriculture	2008-1205-01	C	Light Brown Apple Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0324-02	E	Light Brown Apple Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0304-02	E	Light Brown Apple Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0217-01	E	Light Brown Apple Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0211-03	E	Mediterranean Fruit Fly Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0108-01	E	Light Brown Apple Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0109-03	C	Mediterranean Fruit Fly Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0114-02	S	Modified Point of Origin Inspection Areas	APPROVAL
Department of Food and Agriculture	2009-0127-01	E	Light Brown Apple Moth Interior Quarantine	APPROVAL
Department of Food and Agriculture	2008-1211-01	N	Grapevine Loss Assistance Program	APPROVAL
Department of Food and Agriculture	2008-1217-02	C	Asian Citrus Psyllid Eradication Area	APPROVAL
Department of Food and Agriculture	2008-1201-01	S	Electric Watthour Meters	APPROVAL
Department of Food and Agriculture	2009-0303-03	EE	Asian Citrus Psyllid Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0313-01	E	Asian Citrus Psyllid Interior Quarantine	APPROVAL
Department of Food and Agriculture	2009-0112-02	N	Glassy-winged Sharpshooter	APPROVAL
Department of Food and Agriculture	2008-1217-01	C	False Codling Moth Eradication Area	APPROVAL
Department of Health Care Services	2009-0127-02	N	Hearing Aid Procedures Codes	APPROVAL
Department of Health Care Services	2008-1223-01	N	California Children's Services (CCS) Program	APPROVAL
Department of Health Care Services	2008-1209-01	N	Processing Timeframes for Physicians	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Department of Health Care Services	2008-1210-01	N	Section 100 to Implement Assembly Bill 442	APPROVAL
Department of Housing and Community Development	2008-1208-01	S	Mobilehome Parks & Special Occupancy Parks Act	APPROVAL
Department of Housing and Community Development	2009-0205-02	EE	Re-adoption of Ignition Resistance Construction System within Wildlife Urban Interface	APPROVAL
Department of Industrial Relations	2008-1126-03	S	Workers' Compensation: Qualified Medical Evaluator	APPROVAL
Department of Industrial Relations	2009-0114-03	SR	Group Regulations	APPROVAL
Department of Insurance	2009-0218-04	N	Low Cost Automobile Income Eligibility Guidelines	APPROVAL
Department of Insurance	2009-0209-02	S	California Low Cost Automobile Insurance Rates – 2008	APPROVAL
Department of Insurance	2009-0107-01	S	Low Cost Auto. Plan of Operations	APPROVAL
Department of Insurance	2009-0209-04	N	Intervention/Participation in a Proceeding Other than a Rate Hearing	APPROVAL
Department of Insurance	2008-1222-04	S	Filing of Financial Statements	APPROVAL
Department of Insurance	2009-0109-02	FP	Workers' Compensation Pure Premium Rates	APPROVAL
Department of Insurance	2008-1202-01	FP	Amendments to Rules 24 and 55 of the CAARP Rules and Rates Manual	FILE_PRINT_ONLY
Department of Justice	2009-0107-02	N	Statewide Registry of Private Conservators, Guardians and Trustees	APPROVAL
Department of Justice	2009-0318-02	P	Contractors State License Board Bond Form	APPROVAL
Department of Justice	2008-1222-01	P	Department of Motor Vehicles Bond Form	APPROVAL
Department of Justice	2009-0116-03	N	Section 2010. Definitions subsection (c) "Chip"—amend definition	WITHDRAWN
Department of Justice	2009-0120-01	P	Secretary of State Bond Form	PRINT_ONLY
Department of Justice	2008-1120-01	S	Nonprofit Organization Fundraisers	DISAPPROVAL
Department of Mental Health	2009-0130-01	E	Assessment of Sexually Violent Predators	APPROVAL
Department of Motor Vehicles	2009-0113-02	S	Driver Licenses and ID Cards: Gender Change	APPROVAL
Department of Motor Vehicles	2009-0113-01	S	Driver Record Checks for CDL Applicants	APPROVAL
Department of Motor Vehicles	2008-1223-02	N	Employer Testing Program	APPROVAL
Department of Parks and Recreation	2008-1125-09	S	OHMVR Grants & Cooperative Agreements Program Regulations	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Department of Pesticide Regulation	2009-0209-05	S	Toxic Air Contaminant – Endosulfan	APPROVAL
Department of Public Health	2009-0115-01	S	Safe Drinking Water State Revolving Fund	APPROVAL
Department of Public Health	2009-0108-02	FP	Childhood Lead Poisoning Prevention Fees	FILE_PRINT_ONLY
Department of Public Health	2008-1208-02	S	Skilled Nursing Facility Nursing Staff-To-Patient Ratios	APPROVAL
Department of Rehabilitation	2008-1222-03	FP	Conflict of Interest	FILE_PRINT_ONLY
Department of Social Services	2008-1224-01	C	Emergency Regulations–Minimum Sanction Periods & County Plan Addendum	APPROVAL
Department of Social Services	2008-1223-04	C	Senate Bill 1569 (Ch. 672, Stats of 2006) Implementation	APPROVAL
Department of Social Services	2009-0304-01	E	Homeless Assistance Domestic Violence Provisions	WITHDRAWN
Department of Toxic Substances Control	2008-1202-02	N	Updates to Permit by Rule Notification for PHHWF (FORM DTSC 1094B)	APPROVAL
Department of Toxic Substances Control	2008-1219-03	C	Conso. Universal Waste & Authorization of Electronic Hazardous Waste	APPROVAL
Department of Veterans Affairs	2008-1219-01	S	Veterans Home Admission	APPROVAL
Department of Veterans Affairs	2008-1125-01	S	Definitions of Levels of Care; California Veterans Home	APPROVAL
Department of Veterans Affairs	2009-0115-03	S	Selection of Professional Service Firms	APPROVAL
Department of Water Resources	2009-0209-03	S	Model Water Efficient Landscape Ordinance	DISAPPROVAL
Division of Workers Compensation	2009-0116-01	N	Vocational Rehabilitation	APPROVAL
Emergency Medical Services Authority	2009-0126-03	S	Advanced Emergency Medical Technician; Emergency Medical Technician II	DISAPPROVAL
Fair Political Practices Commission	2009-0116-08	FPPC	Candidate Controlled Ballot Measure Committees	APPROVAL
Fair Political Practices Commission	2008-1212-03	FPPC	Gifts: Tickets or Passes to an Event	APPROVAL
Fair Political Practices Commission	2009-0223-02	FPPC	Determining Indirectly Involved Economic Interests	APPROVAL
Fair Political Practices Commission	2008-1212-02	FPPC	Agency Expenditures Related to a Ballot	APPROVAL
Fair Political Practices Commission	2009-0116-10	FPPC	Political Committee Names	APPROVAL
Fair Political Practices Commission	2009-0116-09	FPPC	Primarily Formed & General Purpose Committees	APPROVAL
Fish and Game Commission	2009-0213-01	E	Incidental Take of California Tiger Salamander During Candidacy	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Fish and Game Commission	2008-1230-04	N	Sport Fish Report Card & Tagging Fee Adjustments	APPROVAL
Fish and Game Commission	2008-1222-02	S	Upland Game Bird – Wild Turkey	APPROVAL
Fish and Game Commission	2009-0213-02	SR	Recreational Groundfish Fishing	APPROVAL
Fish and Game Commission	2009-0202-01	S	Marine Protected Areas–Morro Bay and Dana Point	APPROVAL
Fish and Game Commission	2008-1217-03	S	Recreational Groundfish Fishing	WITHDRAWN
Franchise Tax Board	2009-0205-01	S	Exempt from Taxation; Information Returns & State-ments Exempt Organizations	APPROVAL
Managed Risk Medical Insurance Board	2008-1201-02	S	MRMIB Benefit and Cost Changes	APPROVAL
Managed Risk Medical Insurance Board	2009-0218-05	E	Community Provider Plan Designation Process	APPROVAL
Managed Risk Medical Insurance Board	2009-0105-01	E	HFP Contributions for Vision and Dental Benefits	APPROVAL
Medical Board of California	2009-0209-06	S	Reduction in License Fees	APPROVAL
Occupational Safety and Health Standards Board	2009-0102-02	N	Uses Permitted	APPROVAL
Occupational Safety and Health Standards Board	2009-0116-05	S	Powered Industrial Trucks – Seat Belts and Signaler	APPROVAL
Occupational Safety and Health Standards Board	2009-0116-06	S	Mechanical Refrigeration	APPROVAL
Occupational Safety and Health Standards Board	2009-0122-02	N	Replace Graphics	APPROVAL
Occupational Safety and Health Standards Board	2009-0107-03	N	Replace Graphics	APPROVAL
Occupational Safety and Health Standards Board	2008-1219-04	S	Crane Hoisting – Use of Outriggers, Stabilizers and Other Supports	APPROVAL
Occupational Safety and Health Standards Board	2008-1219-05	S	Properly Rigged (Handling Loads)	APPROVAL
Occupational Safety and Health Standards Board	2008-1218-03	N	Replace Graphics	APPROVAL
Occupational Safety and Health Standards Board	2008-1230-02	N	Replace Graphics	APPROVAL

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 22-Z

AGENCY	FILE NO.	FILE TYPE	SUBJECT	OAL DECISION
Office of Administrative Law	2008-1231-03	N	Revision to Std. Form 400	APPROVAL
Office of Administrative Law	2008-1204-01	N	Editorial Correction to Title 1, CCR Section 260	APPROVAL
Office of Environmental Health Hazard Assessment	2008-1218-04	FP	Chemicals Known to the State to Cause Cancer or Reproductive Toxicity	FILE_PRINT_ONLY
Office of Environmental Health Hazard Assessment	2008-1218-05	FP	Chemicals required by State or Federal Law to Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity But, Which Have Not Been Adequately Tested As Required	FILE_PRINT_ONLY
Office of Environmental Health Hazard Assessment	2009-0205-04	S	Safe Use Determination	WITHDRAWN
Office of Spill Prevention and Response	2009-0114-01	N	Certificates of Financial Responsibility	APPROVAL
Office of Statewide Health Planning and Development	2008-1215-01	S	CA CABG Outcomes Reporting Data Elements	APPROVAL
Physical Therapy Board of California	2009-0309-02	S	Health Related Sciences	APPROVAL
Secretary of State	2009-0324-01	EE	Post Election Manual Tally Requirements in Close Contests	WITHDRAWN
Secretary of State	2008-1226-01	P	Conflict of Interest Code	PRINT_ONLY
State Allocation Board	2008-1222-05	S	Leroy F. Greene School Facilities Act of 1998; Material Inacc. on PIW	APPROVAL
State Allocation Board	2008-1205-02	S	Leroy F. Greene School Facilities Act of 1998; ORG Program Amendments	APPROVAL
State Lands Commission	2008-1229-01	N	Performance Standards for the Discharge of Ballast Water for Vessels	APPROVAL
State Personnel Board	2009-0130-02	FP	Hearings and Appeals	FILE_PRINT_ONLY
State Water Resources Control Board	2008-1118-01	SR	Water Quality Control Plan for Enclosed Bays and Estuaries, Part 1 – Sediment Quality	APPROVAL
State Water Resources Control Board	2009-0106-01	S	Machado Lake Nutrient TMDL	APPROVAL
State Water Resources Control Board	2008-1218-02	S	Revised Conditional Waivers of Waste Discharge Requirements	APPROVAL
State Water Resources Control Board	2008-1125-06	S	Subdivision of Reach 4 of the Santa Clara River Basin Plan Amendment	APPROVAL
Structural Pest Control Board	2009-0204-01	S	IPM Training & Education/Course Evaluations	APPROVAL
Veterinary Medical Board	2008-1117-02	S	RVT Eligibility Categories/Internship/Residency Program	DISAPPROVAL
Veterinary Medical Board	2008-1223-05	S	Limited Term Eligibility Window for Registered Vet Tech Exam	APPROVAL

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2009-0409-01
BOARD OF BEHAVIORAL SCIENCES
Fingerprint Submission

This rulemaking amends California Code of Regulations, Title 16 section 1886.4 and adopts section 1815 to require all licensees who have not previously submitted fingerprints to DOJ to complete a state and federal level criminal offender record information search through the DOJ before renewal of their license. This rulemaking also allows the Board to take disciplinary action and to assess a fine not to exceed \$5,000 for each violation.

Title 16
California Code of Regulations
ADOPT: 1815 AMEND: 1886.40
Filed 05/20/2009
Effective 06/19/2009
Agency Contact: Tracy Rhine (916) 574-7847

File# 2009-0508-02
CALIFORNIA GAMBLING CONTROL COMMISSION
Remote Caller Bingo Definitions; Equipment Approval; Standards; Audits

This emergency regulatory action amends the existing definitions in regulation and regulatory provisions on approval of card-minding devices and adopts new regulations on remote caller bingo requirements and standards of play. This regulatory action was deemed an emergency by the Legislature pursuant to Business and Professions Code section 19850.6.

Title 4
California Code of Regulations
ADOPT: 12488, 12508, 12510, 12511, 12514
AMEND: 12480, 12486
Filed 05/18/2009

Effective 05/18/2009
Agency Contact: James Allen (916) 263-4024

File# 2009-0508-03
CALIFORNIA GAMBLING CONTROL COMMISSION
Assistance to Bingo Players with Disabilities

This emergency action implements Penal Code section 326.5, subdivision (p), paragraph (6), by specifying the means by which the operator of a bingo game shall assist a player who has a disability that would restrict the player's ability to mark a card or verbally announce "BINGO" in performing these activities.

Title 4
California Code of Regulations
ADOPT: 12482
Filed 05/18/2009
Effective 05/18/2009
Agency Contact: James Allen (916) 263-4024

File# 2009-0416-01
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
Training & Testing Specifications for Peace Officer Basic Courses

This regulatory action revises the training and testing specifications for peace officer basic courses to standardize the testing specifications and make additional updates to the training as part of ongoing review.

Title 11
California Code of Regulations
AMEND: 1005, 1007, 1008
Filed 05/21/2009
Effective 07/01/2009
Agency Contact: Julie Hemphill (916) 227-0544

File# 2009-0515-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth

This emergency regulatory action will establish a new regulated area in the Petaluma area of Sonoma County of approximately 40 square miles, expand the regulated area of Napa County by approximately 20 square miles and expand the regulated area in the counties of Alameda, Contra Costa and Santa Clara by approximately 85 square miles. This would result in a total of approximately 2,742 square miles under regulation within the State for the light brown apple moth "LBAM" ("Epiphyas postvittana") due to recent findings of the pest. The effect of these amendments to the regulation is to establish the authority for the State to perform quarantine activities against LBAM in these additional areas.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 05/20/2009
Effective 05/20/2009
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2009-0415-01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This certificate of compliance makes permanent four prior emergency regulatory actions (OAL file nos. 2008-1016-01E, 2008-1105-02E, 2008-1205-03E and 2009-0108-01E) that established new regulated quarantine areas or expanded existing regulated quarantine areas in the counties of Sonoma, Napa, Alameda, Contra Costa, Santa Clara, Monterey, San Benito, Santa Cruz and San Mateo for the light brown apple moth "LBAM" ("Epiphyas postvittana") due to recent findings of the pest. The effect of these amendments to the regulation is to establish the authority for the State to perform quarantine activities against LBAM in these additional areas.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 05/20/2009
Effective 05/20/2009
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2009-0417-04
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Federal HOME Investment Partnership Program

This rulemaking amends section 8217(c) of Title 25 of the California Code of Regulations regarding the federal Home Investment Partnership Program. The rulemaking amends this subsection so as to make it clear that the discretionary exception available from the Department of Housing and Community Development for violations of project requirements applies only to violations which are clearly outside of the control of all members of the development team. The rulemaking further amends this subsection by deleting the provision which limited the availability of this exception to contractors which had not missed three deadlines on a prior project, because, as a result of current economic conditions relevant to housing construction, the missing of three such deadlines on a project is often well beyond the control of the members of a development team.

Title 25
California Code of Regulations
AMEND: 8217
Filed 05/20/2009
Effective 05/20/2009
Agency Contact: Lenora Frazier (916) 323-4475

File# 2009-0403-01
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Income Limits

This regulatory action is the annual update of income limits for households of varying sizes. The regulation was transmitted to OAL for filing with the Secretary of State and publication in the California Code of Regulations pursuant to Health & Safety Code section 50093. This filing is exempt from the rulemaking requirements of articles 5 and 6 of chapter 3.5 of the Administrative Procedure Act, and thus, is not subject to OAL's review. (Health & Saf. Code, sec. 50093(c).) This regulation is effective 4/3/2009, the date the regulation was filed with OAL. (Health & Saf. Code, sec. 50093(c).)

Title 25
California Code of Regulations
ADOPT: 6932 REPEAL: 6932
Filed 05/13/2009
Effective 04/03/2009
Agency Contact: Lenora Frazier (916) 323-4475

File# 2009-0402-06
DEPARTMENT OF PESTICIDE REGULATION
Groundwater Protection List

This action updates the list of pesticide chemicals identified by the Director that have the potential to pollute groundwater.

Title 3
California Code of Regulations
AMEND: 6800
Filed 05/13/2009
Effective 06/12/2009
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

File# 2009-0402-03
DEPARTMENT OF TRANSPORTATION
Grade Separation Section 190 Funding

The Dept. of Transportation is changing two regulatory provisions concerning Grade Separation Projects (Streets and Highways Section 190 funding). This is a competitive grant program which currently provides \$15 million each year to a fund for construction of grade separation projects by local agencies. Project eligibility and priority rankings are determined by the Public Utilities Commission (PUC). The Dept. is responsible for

funding allocations based upon the PUC list of projects. The legislature recently provided for up to a \$15 million allocation for a “single project if that project is the highest ranking project on the priority list.” These amendments conform section 1554 to recent statutory changes and would delete a provision in section 1556 which is inconsistent with the statutory changes.

Title 21
California Code of Regulations
AMEND: 1554, 1556
Filed 05/14/2009
Effective 05/14/2009
Agency Contact: Lauren Clauson (916) 653-0243

File# 2009-0427-01
EMPLOYMENT DEVELOPMENT DEPARTMENT
Disability Insurance Definitions

This rulemaking amends California Code of Regulations, Title 22, section 2601-1 to establish definitions and clarify terms utilized in Employment Development Department (EDD) regulations dealing with State Disability Insurance. EDD is developing new automation processes and protocol to simplify and improve claim processes. This is an effort to improve access to services, improve service delivery, reduce costs and also improve EDD's ability to detect and prevent fraud and abuse. In order to facilitate this change EDD is establishing definitions for terms, including “affidavit”, “copy”, “form”, “mail”, “signature” and “writing.”

Title 22
California Code of Regulations
AMEND: 2601-1
Filed 05/21/2009
Effective 06/20/2009
Agency Contact: Laura Colozzi (916) 654-7712

File# 2009-0421-02
FAIR POLITICAL PRACTICES COMMISSION
Materiality Standard: Interests in Businesses

The Fair Political Practices Commission is amending section 18705.1, title 2, California Code of Regulations, entitled “Materiality Standard: Economic Interests in Business Entities.”

Title 2
California Code of Regulations
AMEND: 18705.1
Filed 05/21/2009
Effective 06/20/2009
Agency Contact:
Virginia Latteri-Lopez (916) 324-3854

File# 2009-0423-03
FISH AND GAME COMMISSION
Silver King Creek Sport Fishing

This regulatory action raises the daily bag and possession limit to 10 trout per day and 10 in possession for Silver King Creek and tributaries from the confluence with Tamarack Lake Creek downstream to the confluence with Snodgrass Creek.

Title 14
California Code of Regulations
AMEND: 7.50(b)(178)
Filed 05/21/2009
Effective 05/21/2009
Agency Contact:
Sherrie Fonbuena (916) 654-9866

File# 2009-0410-01
FRANCHISE TAX BOARD
Presumptions Arising from Federal Audits

This rulemaking amends section 25114 of title 18 of the California Code of Regulations to implement provisions of SB 788, Chapter 306 of 2007, which removed the requirement that the Franchise Tax Board audit every taxpayer whose tax return reveals potential non-compliance with arm's-length dealing requirements following a preliminary examination. The rulemaking changes some terminology and defines any new terms. It also establishes when a taxpayer's examination is considered to have commenced and what tax year the new rule applies to.

Title 18
California Code of Regulations
AMEND: 25114
Filed 05/21/2009
Effective 06/20/2009
Agency Contact:
Colleen Berwick (916) 845-3306

File# 2009-0403-02
OFFICE OF SPILL PREVENTION AND RESPONSE
Contingency Plans

Pursuant to the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990, the Office of Spill Prevention and Response (“OSPR”) is required to establish the “best achievable protection” of California's natural resources against oil spills in the marine waters. OSPR has established what many consider the most stringent standards in the nation with respect to oil spills in California's marine waters. These amendments fine tune and make more stringent response times and booming capabilities in certain areas based upon OSPR's evaluation of the potential risks of serious harm and capabilities to cover those risks.

Title 14
California Code of Regulations
AMEND: 790, 818.02, 827.02
Filed 05/15/2009
Effective 07/01/2009
Agency Contact:
Joy D. Lavin-Jones (916) 327-0910

File# 2009-0403-03
OFFICE OF SPILL PREVENTION AND RESPONSE
Administrative Compliance Actions

This rulemaking action amends sections of Title 14 of the California Code of Regulations to conform to statutes amended by Assembly Bill 2911, Chapter 565 of 2008. The rulemaking adds inland oil spills to the marine oil spills already encompassed by the regulations. It also repeals the violation classification system so as to enable the Office of Spill Prevention and Response to levy more substantial fines for egregious or deliberate violations that may not necessarily cause an oil spill. The rulemaking also makes some changes to the administrative hearing process regarding hearing postponements and discovery requirements.

Title 14
California Code of Regulations
ADOPT: 874.2.5 AMEND: 790, 873.1, 873.2, 873.4, 873.5, 873.7, 874.2, 877.2, 877.3 REPEAL: 873.3
Filed 05/14/2009
Effective 06/13/2009
Agency Contact:
Joy D. Lavin-Jones (916) 327-0910

File# 2009-0402-02
SECRETARY OF STATE
Business Entity Names

This action adopts provisions governing the review and approval of proposed business entity names by the Secretary of State pursuant to applicable statutes.

Title 2
California Code of Regulations
ADOPT: 21000, 21001, 21002, 21003, 21004, 21005, 21006, 21007, 21008, 21009
Filed 05/14/2009
Effective 05/14/2009
Agency Contact: Todd Vlaanderen (916) 653-7514

File# 2009-0402-05
STATE WATER RESOURCES CONTROL BOARD
Water Recycling Policy

This regulatory action adopts a water quality policy for recycled water.

Title 23
California Code of Regulations
ADOPT: 2920
Filed 05/14/2009
Effective 05/14/2009
Agency Contact: Gordon Innes (916) 341-5517

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN December 17, 2008 TO
May 20, 2009**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

01/20/09 AMEND: 260
01/20/09 AMEND: Appendix A, Std. Form 400

Title 2

05/14/09 ADOPT: 21000, 21001, 21002, 21003, 21004, 21005, 21006, 21007, 21008, 21009
05/08/09 ADOPT: 18410 AMEND: 18402
04/30/09 AMEND: 1859.129, 1859.197
04/28/09 AMEND: div. 8, ch. 111, section 59560
04/22/09 ADOPT: 1859.148.2, 1859.166.2
AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197
03/05/09 AMEND: 18704
02/17/09 AMEND: 51.3
02/02/09 AMEND: 18402, 18450.3
01/30/09 ADOPT: 18427.5
01/30/09 ADOPT: 18421.8, 18521.5 AMEND: 18401
01/27/09 AMEND: 2294
01/26/09 AMEND: 1859.104.1
01/21/09 ADOPT: 1859.184.1 AMEND: 1859.2, 1859.103, 1859.184
01/12/09 AMEND: div. 8, ch. 24, secs. 45100, 45127, 45128
01/08/09 ADOPT: 18420.1
01/08/09 ADOPT: 18944.3 AMEND: 18944.1
12/30/08 AMEND: 714
12/29/08 ADOPT: 2298

Title 3

05/20/09 AMEND: 3434(b)
05/20/09 AMEND: 3434(b)
05/13/09 AMEND: 6800

05/04/09 AMEND: 3434(b)
 04/27/09 AMEND: 3434(b)
 04/20/09 AMEND: 6452.2
 03/30/09 AMEND: 3434(b)
 03/25/09 AMEND: 6860
 03/23/09 AMEND: 3423(b)
 03/19/09 ADOPT: 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222.1, 1222.4, 1209, 1209.1, 1245.1, 1245.2, 1245.3, 1245.4, 1260.2, 1269, 1269.1, 1269.2, 1271 AMEND: 1200, 1201, 1202, 1204, 1205, 1206, 1207, 1208, 1222, 1223, 1223.1, 1235, 1236, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1245.1, 1245.2, 1245.3, 1245.4, 1245.5, 1245.6, 1245.7, 1245.8, 1245.9, 1245.10, 1245.11, 1245.12, 1245.13, 1245.14, 1245.15, 1245.16, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1260.1, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270 REPEAL: 1203, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1237
 03/18/09 AMEND: 3435(b)
 03/10/09 AMEND: 3434
 03/05/09 AMEND: 3591.20(a)
 03/04/09 AMEND: 3435
 02/27/09 AMEND: 3434(b)
 02/26/09 AMEND: 850
 02/19/09 AMEND: 3434(b)
 02/13/09 AMEND: 3406(b)
 02/10/09 AMEND: 3060.4(a)(1)(C)(1), 3652(k)
 02/05/09 AMEND: 3434(b)
 02/02/09 AMEND: 3406(b)
 01/21/09 ADOPT: 3591.22(a), 3591.22(b), 3591.22(c), 3591.22(d)
 01/21/09 ADOPT: 3591.21(a), 3591.21(b), 3591.21(c)
 01/20/09 REPEAL: 3664, 3665, 3666, 3667, 3668, 3669
 01/14/09 AMEND: 3434(b)
 01/13/09 AMEND: 3434(b)
 01/12/09 AMEND: 3589(a)
 12/30/08 AMEND: 3417(b)
 12/18/08 AMEND: 3417(b)
 12/18/08 AMEND: 3406(b)

Title 4

05/18/09 ADOPT: 12488, 12508, 12510, 12511, 12514 AMEND: 12480, 12486

05/18/09 ADOPT: 12482
 05/12/09 AMEND: 406
 05/12/09 ADOPT: 12591
 04/24/09 ADOPT: 12480, 12492, 12494, 12496, 12498, 12499, 12501, 12502, 12504 AMEND: 12482
 04/24/09 AMEND: 12482
 03/23/09 AMEND: 10175, 10176, 10177, 10182, 10185, 10187, 10188, 10189, 10190
 03/11/09 AMEND: 1865
 03/10/09 ADOPT: 12388, 12410
 03/05/09 ADOPT: 2066
 03/05/09 ADOPT: 1504.5 AMEND: 1481, 1486
 03/04/09 AMEND: 2073
 02/23/09 ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101 REPEAL: 8102.10
 02/13/09 ADOPT: 12362
 02/11/09 ADOPT: 8078.1 AMEND: 8070, 8072, 8076, 8078
 01/13/09 ADOPT: 4027, 4027.1, 4027.2, 4027.3, 4027.4, 4027.5
 12/29/08 AMEND: 12482

Title 5

05/11/09 AMEND: 80023, 80024.4, 80024.5, 80024.6, 80025.5, 80026, 80026.1, 80026.6, 80034.5 REPEAL: 80024.3, 80026.4, 80042, 80042.5, 80569
 05/11/09 AMEND: 24002, 24003, 24005
 05/07/09 ADOPT: 3090, 3090.1, 3091, 3092, 3093, 3094, 3095, 3096, 3096.1, 3096.2, 3097, 3098, 3098.1, 3098.2, 3099
 04/30/09 ADOPT: 26000
 03/27/09 AMEND: 3001, 3051, 3060, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070
 03/05/09 AMEND: 80225
 02/17/09 AMEND: 80413, 80487
 02/04/09 ADOPT: 9800, 9810, 9820, 9830
 01/20/09 ADOPT: 9517.1
 01/05/09 AMEND: 80004

Title 8

05/01/09 AMEND: 3030, 3037, 3089, 3097, 3098, 3101, 3107
 05/01/09 AMEND: 4530
 04/20/09 AMEND: 10100.2, 10101.1, 10103.2, 10104, 10105, 10106.1, 10106.5, 10107.1, 10108, 10109, 10111.1, 10111.2, 10112, 10113.4, 10113.5, 10114.2, 10115, 10115.1, 10115.2

04/06/09	ADOPT: 227, 314, 389 AMEND: 281, 303, 323, 368, 523	3575, Appendices A, B, C, D, E, F, G following Section 3583
04/01/09	ADOPT: 2710.1, 2716.1, 2718, 2718.1, 2738, 2739.0, 2739.4, 2742.0, 2742.1, 2742.2, 2742.3, 2745.0, 2745.1, 2749.2, 2754.1, 2754.2, 2796, 2799.1, 2799.2, 2799.3, 2799.4, 2799.5, 2799.6, 2812.2, 2812.3, 2832, 2833.1, 2833.2, 2882.2, 2985.0, 2985.1, 2985.2, 2987.0, 2987.1, 2989.0, 2989.1 AMEND: 2700, 2706, 2707, 2710, 2712, 2714, 2715, 2725, 2735, 2739.1, 2743, 2745.2, 2749.1, 2753, 2790, 2791, 2792, 2795, 2797, 2799.0, 2805, 2810, 2812.1, 2816, 2819, 2820, 2833, 2845, 2847, 2863, 2873, 2874, 2875, 2880, 2882.1, 2890, 2893, 2908, 2910, 2931, 2932, 2933, 2934, 2935, 2946, 2974 REPEAL: 2742	01/29/09 AMEND: 4994 01/28/09 AMEND: 4999 01/20/09 AMEND: Appendix B following sections 1529, 5208, 8358 01/15/09 AMEND: 2500.7 01/13/09 ADOPT: 29, 31.1, 31.3, 31.7, 32.6, 36.5, 41.5, 41.6, 41.7, 63, 120, 121, 122, 123, 124 AMEND: 1, 10, 11, 11.5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 30, 30.5, 31, 31.5, 32, 33, 34, 35, 35.5, 36, 38, 39, 39.5, 40, 41, 43, 44, 45, 46, 46.1, 47, 49, 49.2, 49.4, 49.6, 49.8, 49.9, 50, 51, 52, 54, 55, 56, 57, 60, 61, 62, 65, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 118, 119, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159 REPEAL: 10.5, 32.5, 37, 53, 70, 71, 72, 73, 74, 75, 76, 76.5, 77, 101, 114, 115 12/22/08 ADOPT: 16404, 16430, 16435.5 AMEND: 16421, 16422, 16423, 16424, 16425, 16426, 16427, 16428, 16429, 16431, 16432, 16434, 16435, 16436, 16437, 16439
03/04/09	AMEND: 3248	
03/02/09	ADOPT: 15475.1, 15475.2, 15475.3, 15482, 15482.1, 15482.2, 15483, 15484, 15485, 15486, 15486.1, 15487, 15488, 15489, 15489.1, 15490, 15490.1, 15491, 15496, 15497, 15497.1, 15498, 15499, 15499.5 AMEND: 15201, 15203, 15203.1, 15203.2, 15203.3, 15203.4, 15203.5, 15203.6, 15203.7, 15203.8, 15203.9, 15203.10, 15204, 15205, 15210, 15210.1, 15210.2, 15210.3, 15211, 15211.1, 15211.2, 15215, 15230, 15251, 15353, 15360, 15405, 15470, 15471, 15472, 15473, 15474, 15475, 15476, 15477, 15478, 15479, 15480, 15481, 15601.7	Title 9 02/06/09 ADOPT: 4000, 4005 01/07/09 AMEND: 7400
03/02/09	AMEND: 3209, 3299, 4885, 5049, 5085, 5152, 5193, 5207, 5215, 5297, 5299, 5302, 5304, 5449, 6402, 6503, 6600	Title 10 05/12/09 AMEND: 2716.1, 2790.1.5, 2810.5 05/01/09 AMEND: 2699.6603 03/27/09 AMEND: 2498.6 (Exhibit C) 03/25/09 AMEND: 2661.3, 2661.4, 2662.1 03/23/09 AMEND: 2498.6 02/26/09 AMEND: 2699.6805 02/23/09 AMEND: 2318.6, 2353.1 02/23/09 AMEND: 2498.6 02/19/09 AMEND: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117 REPEAL: 5119 02/05/09 ADOPT: 2308.1, 2308.2, 2308.3 01/15/09 AMEND: 2699.6707, 2699.6711, 2699.6721, 2699.6723, 2699.6725, 2699.6809 01/14/09 AMEND: 2698.100, 2698.200, 2698.201, 2698.206, 2698.300, 2698.301 01/12/09 AMEND: 2498.5 12/31/08 ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55
02/25/09	REPEAL: 10116.4, 10122, 10122.1, 10123, 10123.2, 10123.3, 10124, 10124.1, 10125, 10125.1, 10125.2, 10125.3, 10126, 10127, 10127.1, 10127.2, 10127.3, 10128, 10129, 10129.1, 10130, 10131, 10131.1, 10131.2, 10132, 10132.1, 10133, 10133.2, 10133.4, 10133.10, 10133.11, 10133.12, 10133.13, 10133.14, 10133.15, 10133.16, 10133.17, 10133.18, 10133.19, 10133.20, 10133.21, 10133.22	
02/18/09	AMEND: 3664, 3732, 3737, 3944, 4186, 4307.1, 4345, 4353, 4354	Title 11 04/17/09 AMEND: 30.1 04/01/09 ADOPT: 9056, 9057, 9058, 9059, 9060 AMEND: 1018 04/01/09 ADOPT: 9050, 9051, 9052, 9053, 9054, 9055 REPEAL: 1002
02/13/09	AMEND: 3336, 3650, 3653	
02/09/09	AMEND: 3231, 3277, Appendix B Following Section 3299, Appendix A following Section 3326, 3340, 3341,	

03/30/09 ADOPT: 30.15
 03/03/09 AMEND: 9070, 9077
 02/18/09 REPEAL: 313, 314, 315, 316, 317, 318,
 319, 320, 321, 322, 323, 324, 325, 326,
 327
 02/03/09 ADOPT: 64.7
 01/28/09 AMEND: 51.19
 12/31/08 AMEND: 1005(d)

Title 12

02/26/09 ADOPT: 800, 800.1, 801, 802, 803, 804,
 805, 806, 807, 808, 809
 01/27/09 AMEND: 501
 01/12/09 AMEND: 503

Title 13

03/18/09 ADOPT: 1962.1 AMEND: 1900, 1962,
 1962.1 renumber as 1962.2
 03/10/09 ADOPT: 1160.6 AMEND: 1160.3,
 1160.4
 02/26/09 ADOPT: 29.00
 02/05/09 ADOPT: 20.05 AMEND: 20.04
 02/05/09 AMEND: 25.08
 01/20/09 AMEND: 2700, 2701, 2702, 2703, 2704,
 2705, 2706, 2708, 2709, 2710
 12/22/08 AMEND: 553.70

Title 14

05/15/09 AMEND: 790, 818.02, 827.02
 05/14/09 ADOPT: 874.2.5 AMEND: 790, 873.1,
 873.2, 873.4, 873.5, 873.7, 874.2, 877.2,
 877.3 REPEAL: 873.3
 05/13/09 AMEND: 25201
 05/07/09 AMEND: 25201
 05/04/09 AMEND: 670.5
 04/27/09 ADOPT: 749.5
 04/08/09 AMEND: 2245, 2320
 03/18/09 AMEND: 632
 03/16/09 ADOPT: 20004.1, 20009.1, 20009.2
 AMEND: 20000, 20001, 20002, 20003,
 20004, 20005, 20008, 20009
 03/04/09 AMEND: 2000, 2090, 2516, 2530, 2620,
 2630, 2660, 2670, 2720, 2730
 03/03/09 ADOPT: 27.32 AMEND: 27.20, 27.25,
 27.30, 27.35, 27.40, 27.45, 27.50, 27.51,
 28.26, 28.27, 28.28, 28.29, 28.48, 28.49,
 28.51, 28.52, 28.53, 28.54, 28.55, 28.56,
 28.57, 28.58
 03/02/09 AMEND: 791.7(a), Form FG
 OSPR-1924, Form FG OSPR-1925,
 Form FG OSPR-1972
 02/25/09 AMEND: 1038, 1052
 02/23/09 ADOPT: 749.4
 01/28/09 AMEND: 701
 01/13/09 AMEND: 300
 01/12/09 ADOPT: 4970.00, 4970.01, 4970.02,
 4970.03, 4970.04, 4970.05, 4970.06.1,

4970.06.2, 4970.06.3, 4970.07,
 4970.07.1, 4970.07.2, 4970.08, 4970.09,
 4970.10, 4970.10.1, 4970.10.2,
 4970.10.3, 4970.10.4, 4970.11, 4970.12,
 4970.13, 4970.14, 4970.14.1, 4970.14.2,
 4970.14.3, 4970.15, 4970.15.1,
 4970.15.2, 4970.15.3, 4970.15.4,
 4970.16, 4970.17, 4970.18, 4970.19,
 4970.19.1, 4970.19.2, 4970.19.3,
 4970.19.4, 4970.19.5, 4970.19.6,
 4970.20, 4970.21, 4970.22, 4970.23,
 4970.23.1, 4970.23.2, 4970.24,
 4970.25.1, 4970.25.2, 4970.25.3,
 4970.26 REPEAL: 4970.49, 4970.50,
 4970.51, 4970.52, 4970.53, 4970.54,
 4970.55, 4970.56, 4970.57, 4970.58,
 4970.59, 4970.60, 4970.61, 4970.62,
 4970.63, 4970.64, 4970.65, 4970.66,
 4970.67, 4970.68, 4970.69, 4970.70,
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 12/31/08 AMEND: 957 REPEAL: 957.11, 957.12
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